

IOWA ADMINISTRATIVE BULLETIN

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PREFACE

The Iowa Administrative Bulletin is published biweekly in pamphlet form pursuant to Iowa Code chapters 2B and 17A and contains Notices of Intended Action on rules, Filed and Filed Emergency rules by state agencies.

It also contains Proclamations and Executive Orders of the Governor which are general and permanent in nature; Economic Impact Statements to proposed rules and filed emergency rules; Objections filed by Administrative Rules Review Committee, Governor or the Attorney General; and Delay by the Committee of the effective date of filed rules; Regulatory Flexibility Analyses and Agenda for monthly Administrative Rules Review Committee meetings. Other “materials deemed fitting and proper by the Administrative Rules Review Committee” include summaries of Public Hearings, Attorney General Opinions and Supreme Court Decisions.

The Bulletin may also contain Public Funds Interest Rates [12C.6]; Workers’ Compensation Rate Filings [515A.6(7)]; Usury [535.2(3)“a”]; Agricultural Credit Corporation Maximum Loan Rates [535.12]; and Regional Banking—Notice of Application and Hearing [524.1905(2)].

PLEASE NOTE: *Italics* indicate new material added to existing rules; ~~strike-through letters~~ indicate deleted material.

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Capitol Building
Des Moines, IA 50319
Telephone: (515)281-3568

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Jan. 2 '04	Jan. 21 '04	Feb. 10 '04	Feb. 25 '04	Feb. 27 '04	Mar. 17 '04	Apr. 21 '04	July 19 '04
Jan. 16	Feb. 4	Feb. 24	Mar. 10	Mar. 12	Mar. 31	May 5	Aug. 2
Jan. 30	Feb. 18	Mar. 9	Mar. 24	Mar. 26	Apr. 14	May 19	Aug. 16
Feb. 13	Mar. 3	Mar. 23	Apr. 7	Apr. 9	Apr. 28	June 2	Aug. 30
Feb. 27	Mar. 17	Apr. 6	Apr. 21	Apr. 23	May 12	June 16	Sept. 13
Mar. 12	Mar. 31	Apr. 20	May 5	May 7	May 26	June 30	Sept. 27
Mar. 26	Apr. 14	May 4	May 19	May 21	June 9	July 14	Oct. 11
Apr. 9	Apr. 28	May 18	June 2	June 4	June 23	July 28	Oct. 25
Apr. 23	May 12	June 1	June 16	June 18	July 7	Aug. 11	Nov. 8
May 7	May 26	June 15	June 30	July 2	July 21	Aug. 25	Nov. 22
May 21	June 9	June 29	July 14	July 16	Aug. 4	Sept. 8	Dec. 6
June 4	June 23	July 13	July 28	July 30	Aug. 18	Sept. 22	Dec. 20
June 18	July 7	July 27	Aug. 11	Aug. 13	Sept. 1	Oct. 6	Jan. 3 '05
July 2	July 21	Aug. 10	Aug. 25	Aug. 27	Sept. 15	Oct. 20	Jan. 17 '05
July 16	Aug. 4	Aug. 24	Sept. 8	Sept. 10	Sept. 29	Nov. 3	Jan. 31 '05
July 30	Aug. 18	Sept. 7	Sept. 22	Sept. 24	Oct. 13	Nov. 17	Feb. 14 '05
Aug. 13	Sept. 1	Sept. 21	Oct. 6	Oct. 8	Oct. 27	Dec. 1	Feb. 28 '05
Aug. 27	Sept. 15	Oct. 5	Oct. 20	Oct. 22	Nov. 10	Dec. 15	Mar. 14 '05
Sept. 10	Sept. 29	Oct. 19	Nov. 3	Nov. 5	Nov. 24	Dec. 29	Mar. 28 '05
Sept. 24	Oct. 13	Nov. 2	Nov. 17	***Nov. 17***	Dec. 8	Jan. 12 '05	Apr. 11 '05
Oct. 8	Oct. 27	Nov. 16	Dec. 1	Dec. 3	Dec. 22	Jan. 26 '05	Apr. 25 '05
Oct. 22	Nov. 10	Nov. 30	Dec. 15	***Dec. 15***	Jan. 5 '05	Feb. 9 '05	May 9 '05
Nov. 5	Nov. 24	Dec. 14	Dec. 29	Dec. 31	Jan. 19 '05	Feb. 23 '05	May 23 '05
Nov. 17	Dec. 8	Dec. 28	Jan. 12 '05	Jan. 14 '05	Feb. 2 '05	Mar. 9 '05	June 6 '05
Dec. 3	Dec. 22	Jan. 11 '05	Jan. 26 '05	Jan. 28 '05	Feb. 16 '05	Mar. 23 '05	June 20 '05
Dec. 15	Jan. 5 '05	Jan. 25 '05	Feb. 9 '05	Feb. 11 '05	Mar. 2 '05	Apr. 6 '05	July 4 '05
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PRINTING SCHEDULE FOR IAB

ISSUE NUMBER

SUBMISSION DEADLINE

ISSUE DATE

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Friday, February 27, 2004

March 17, 2004

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March 31, 2004

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Friday, March 26, 2004

April 14, 2004

PLEASE NOTE:

Rules will not be accepted after **12 o'clock noon** on the Friday filing deadline days unless prior approval has been received from the Administrative Rules Coordinator's office.

If the filing deadline falls on a legal holiday, submissions made on the following Monday will be accepted.

Note change of filing deadline

PUBLICATION PROCEDURES

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The Administrative Rules Review Committee will hold a special meeting on Monday, March 8, 2004, at 9 a.m. in Room 116, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

NOTE: See also Supplemental Agenda to be published in the March 3, 2004, Iowa Administrative Bulletin.

ACCOUNTANCY EXAMINERS BOARD[193A]

Professional Licensing and Regulation Division[193]

COMMERCE DEPARTMENT[181]"umbrella"

Certification of CPAs; fees, 3.1 to 3.15, 12.1, Filed **ARC 3175B** 2/18/04

ADMINISTRATIVE SERVICES DEPARTMENT[11]

Offset of debts owed state agencies, adopt ch 40, Filed **ARC 3161B** 2/18/04

Pay; recruitment, application and examination; eligible lists; filling vacancies; appointments;

probationary period; promotion, transfer, temporary assignment, reassignment and voluntary demotion; political activity; conduct of employees; drug use and drug tests,

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EDUCATION DEPARTMENT[281]"umbrella"

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EDUCATIONAL EXAMINERS BOARD[282]

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PUBLIC HEALTH DEPARTMENT[641]

- Notification and surveillance of reportable communicable and infectious diseases,
poisonings and conditions, 1.1, 1.4, 1.9, Filed **ARC 3150B** 2/4/04
- Radiation, amendments to chs 38 to 42, 45, 46, Notice **ARC 3147B** 2/4/04
- Renovation, remodeling, and repainting—lead hazard notification process, 69.2, 69.3(2),
69.4(2), 69.9, 69.9(2), 69.10, 69.11, Notice **ARC 3148B** 2/4/04
- Lead professional certification, amendments to ch 70, Notice **ARC 3134B** 2/4/04
- Volunteer health care provider program, ch 88, Filed **ARC 3149B** 2/4/04

PUBLIC SAFETY DEPARTMENT[661]

- Fire safety standards for residential care facilities, 5.950, Notice **ARC 3173B** 2/18/04
- Hospitals and health care facilities—compliance with building code and fire safety standards,
16.130(15), Notice **ARC 3172B**, also Filed Emergency **ARC 3171B** 2/18/04

RACING AND GAMING COMMISSION[491]

INSPECTIONS AND APPEALS DEPARTMENT[481]“umbrella”

- Confidentiality of security plans, surveillance plans, and internal controls; board of stewards;
access to drug testing results; licensing; close of wagering; jackpot, credit, and ticket payouts,
3.13(2)“j,” 4.6(5)“c,” 5.4(14)“b,” 6.2(3)“b”(1), 6.6(2), 6.17(2), 8.2(15)“a,” 12.14, 12.14(6),
12.14(7), Notice **ARC 3130B** 2/4/04

REAL ESTATE COMMISSION[193E]

Professional Licensing and Regulation Division[193]

COMMERCE DEPARTMENT[181]“umbrella”

- Continuing education and prelicense education for salespersons, 3.1(5), 16.3(2), Notice **ARC 3174B** 2/18/04

REVENUE DEPARTMENT[701]

- Department organization; definition of “livestock” to include whitetail deer and mule deer;
exemption for fees charged by financial institutions to a noncustomer; exemption for
transfer of vehicle subject to registration from one corporation to another; inheritance tax,
5.13(2)“bb,” 5.14(6)“ii” to “mm,” 6.1(1), 6.1(3), 8.2(2), 8.4(2), 17.9(1), 26.8(4)“p,”
34.5(9), 86.1, 86.2(2)“d,” 86.5(7)“d,” Notice **ARC 3184B** 2/18/04
- Interest rate for calendar year 2004, 10.2(23), Filed **ARC 3181B** 2/18/04
- Individual income tax; corporate tax, 38.8, 39.6(2)“f,” 40.1, 40.18(1)“a”(1), 40.28, 41.3,
42.10, 43.1(1), 46.3(2)“a,” 46.4(5), 50.3, 52.1(3), 52.12, 53.2(1)“a”(1), 53.19,
54.6(3), 54.6(3)“b”(2), 59.1, 89.8(7)“t”“4,” 89.8(8)“c,” Filed **ARC 3183B** 2/18/04
- Individual income tax, 38.10, 38.10(1) to 38.10(17), 40.17, 40.38(7),
41.5(7), 42.2(8), 42.4(3)“b” and “c,” 42.22, 43.3(1), 43.3(15), Filed **ARC 3182B** 2/18/04

REVENUE DEPARTMENT[701] (Cont'd)

New school infrastructure local option sales and services tax—effective on or after
 April 1, 2003, through fiscal years ending December 31, 2022, ch 108 preamble,
 adopt ch 109, Notice **ARC 3177B** 2/18/04

TRANSPORTATION DEPARTMENT[761]

Federal motor carrier safety regulations and hazardous materials regulations,
 520.1(1)“a” and “b,” Notice **ARC 3122B** 2/4/04

Driver education; motorcycle rider education; motorized bicycle rider education,
 600.12 to 600.14; adopt ch 634; 635.2(2), 635.6, 635.7; adopt ch 636, Notice **ARC 3123B** 2/4/04

UTILITIES DIVISION[199]

COMMERCE DEPARTMENT[181]“umbrella”

Electric energy adjustment clause, 20.9, 20.9(2)“a,” 20.9(2)“b”(5), Notice **ARC 3135B** 2/4/04

VOTER REGISTRATION COMMISSION[821]

Voter registration applications; lists of registered voters, 2.1, 2.8, 3.10, Filed **ARC 3164B** 2/18/04

ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS

Regular statutory meetings are held the second Tuesday of each month at the seat of government as provided in Iowa Code section 17A.8. A special meeting may be called by the Chair at any place in the state and at any time.

EDITOR'S NOTE: Terms ending April 30, 2007.

Senator Michael Connolly
 3458 Daniels Street
 Dubuque, Iowa 52002

Senator John P. Kibbie
 P.O. Box 190
 Emmetsburg, Iowa 50536

Senator Mary Lundby
 P.O. Box 648
 Marion, Iowa 52302-0648

Senator Paul McKinley
 Route 5, Box 101H
 Chariton, Iowa 50049

Senator Donald Redfern
 415 Clay Street
 Cedar Falls, Iowa 50613

Joseph A. Royce
Legal Counsel
 Capitol, Room 116A
 Des Moines, Iowa 50319
 Telephone (515)281-3084
 Fax (515)281-5995

Representative Danny Carroll
 244 400th Avenue
 Grinnell, Iowa 50112

Representative George Eichhorn
 3533 Fenton Avenue
 Stratford, Iowa 50249

Representative Marcella R. Frevert
 P.O. Box 324
 Emmetsburg, Iowa 50536

Representative David Heaton
 510 East Washington
 Mt. Pleasant, Iowa 52641

Representative Geri Huser
 213 Seventh Street NW
 Altoona, Iowa 50009

Brian Gentry
Administrative Rules Coordinator
 Governor's Ex Officio Representative
 Capitol, Room 11
 Des Moines, Iowa 50319

To All Agencies:

The Administrative Rules Review Committee voted to request that Agencies comply with Iowa Code section 17A.4(1)“b” by allowing the opportunity for oral presentation (hearing) to be held at least **twenty** days after publication of Notice in the Iowa Administrative Bulletin.

AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
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ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Community development block grant—application review criteria, elimination of preapplication, 23.6 IAB 2/4/04 ARC 3151B	First Floor Northwest Conference Rm. 200 E. Grand Ave. Des Moines, Iowa	February 24, 2004 1:30 p.m.
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EDUCATIONAL EXAMINERS BOARD[282]

Code of professional conduct and ethics, rescind chs 12, 13; adopt ch 25 IAB 1/7/04 ARC 3089B	Room 3 North Third Floor Grimes State Office Bldg. Des Moines, Iowa	February 24, 2004 1 p.m.
Fee increases for licenses and authorizations, 14.121, 17.7(3), 19.5(2), 21.2, 21.5 IAB 2/18/04 ARC 3180B	Room 3 North Third Floor Grimes State Office Bldg. Des Moines, Iowa	March 11, 2004 2 p.m.
Code of rights and responsibilities, adopt ch 26 IAB 1/7/04 ARC 3090B	Room 3 North Third Floor Grimes State Office Bldg. Des Moines, Iowa	February 24, 2004 2 p.m.

EDUCATION DEPARTMENT[281]

Financial incentives for national board certification, 84.2, 84.4, 84.5 IAB 2/4/04 ARC 3136B	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	March 2, 2004 1 p.m.
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ELDER AFFAIRS DEPARTMENT[321]

Agency procedures; senior living coordination unit, 1.2, ch 3; adopt ch 11; ch 16; amend chs 17, 18 IAB 2/4/04 ARC 3145B (ICN Network)	Public Library 21 E. Third St. Spencer, Iowa	February 25, 2004 9 to 11 a.m.
	Public Library 400 Willow Ave. Council Bluffs, Iowa	February 25, 2004 9 to 11 a.m.
	Third Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	February 25, 2004 9 to 11 a.m.
	Room 3 West-19C Veterans Administration Medical Ctr. 601 Hwy 6 Iowa City, Iowa	February 25, 2004 9 to 11 a.m.

ELDER AFFAIRS DEPARTMENT[321] (Cont'd)

Assisted living programs, ch 25 IAB 2/4/04 ARC 3146B (ICN Network)	Public Library 21 E. Third St. Spencer, Iowa	February 25, 2004 9 to 11 a.m.
	Public Library 400 Willow Ave. Council Bluffs, Iowa	February 25, 2004 9 to 11 a.m.
	Third Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	February 25, 2004 9 to 11 a.m.
	Room 3 West-19C Veterans Administration Medical Ctr. 601 Hwy 6 Iowa City, Iowa	February 25, 2004 9 to 11 a.m.

ENVIRONMENTAL PROTECTION COMMISSION[567]

Terms used in determination of PSD permit review, 20.2, 22.4(1), 22.5(1), 22.100, 22.120 IAB 2/4/04 ARC 3155B	Air Quality Bureau 7900 Hickman Rd. Urbandale, Iowa	April 1, 2004 1 p.m.
	Public Library 321 Main St. Davenport, Iowa	April 2, 2004 1 p.m.
Animal feeding operations—health effects value and health effects standard for hydrogen sulfide, 20.2, adopt ch 32 IAB 1/7/04 ARC 3092B	Iowa Western Community College 906 Sunnyside Ln. Atlantic, Iowa	February 25, 2004 7 p.m.
	Public Library 225 Second St. SE Mason City, Iowa	March 3, 2004 6 p.m.
	Public Library 321 Main St. Davenport, Iowa	March 8, 2004 6:30 p.m.
	Public Library 3520 86th St. Urbandale, Iowa	March 11, 2004 7 p.m.
Manure management plan content; inclusion of phosphorus index, 65.17; ch 65 tables 3, 3a, 4a, 5 IAB 2/18/04 ARC 3167B	Maar Park Conservation Center 2943 Hwy 92 Ainsworth, Iowa	March 22, 2004 6 p.m.
	Fourth Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	March 23, 2004 1:30 p.m.
	Public Library 507 Poplar St. Atlantic, Iowa	March 24, 2004 6 p.m.

ENVIRONMENTAL PROTECTION COMMISSION[567] (Cont'd)

Spencer School Administrative Offices 23 E. Seventh St. Spencer, Iowa	March 25, 2004 6 p.m.
Gilbertson Nature Center 2258 A Ave. Elgin, Iowa	March 26, 2004 6 p.m.

PROFESSIONAL LICENSURE DIVISION[645]

Chiropractors, 40.4, 40.6, 41.2(1), 41.6(2), 41.8, 41.11 to 41.13, ch 45, 46.1 IAB 2/4/04 ARC 3133B	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	February 28, 2004 9 to 10 a.m.
Nursing home administrators, 140.6, ch 144 IAB 2/4/04 ARC 3124B	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	February 24, 2004 10 to 11 a.m.
Optometrists, 179.4, 179.6, 180.2(1), 180.5, 180.8 to 180.10, ch 183, 184.1 IAB 2/4/04 ARC 3131B	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	February 24, 2004 9 to 10 a.m.
Physician assistants, 325.4, 325.6, 326.9, 326.12 to 326.18, ch 329, 330.1 IAB 2/18/04 ARC 3165B	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	March 9, 2004 9 to 10 a.m.
Physician assistants— licensure and practice, 326.1, 327.1, 327.3, 327.4, 327.6 IAB 2/18/04 ARC 3166B	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	March 10, 2004 9 to 10 a.m.

PUBLIC HEALTH DEPARTMENT[641]

Radiation, amendments to chs 38 to 42, 45, 46 IAB 2/4/04 ARC 3147B	Conference Room, Suite D 401 SW Seventh St. Des Moines, Iowa	February 24, 2004 8:30 a.m.
Renovation, remodeling, and repainting—lead hazard notification process, amendments to ch 69 IAB 2/4/04 ARC 3148B (ICN Network)	Room 550, Fifth Floor 411 Third St. SE Cedar Rapids, Iowa	February 24, 2004 10 a.m.
	Room 101, Dubuque Downtown Northeast Iowa Community College 700 Main St. Dubuque, Iowa	February 24, 2004 10 a.m.
	Turner Room, Green Valley AEA 1405 N. Lincoln Creston, Iowa	February 24, 2004 10 a.m.
	Room 304, Kahl Educational Center 326 W. Third St. Davenport, Iowa	February 24, 2004 10 a.m.

PUBLIC HEALTH DEPARTMENT[641] (Cont'd)
(ICN Network)

	Loess Hills AEA 24997 Hwy 92 Council Bluffs, Iowa	February 24, 2004 10 a.m.
	Room 106, Activity Center NIACC 500 College Dr. Mason City, Iowa	February 24, 2004 10 a.m.
	Conference Room A Ottumwa Regional Health Center 1001 E. Pennsylvania Ottumwa, Iowa	February 24, 2004 10 a.m.
	Room 204, Library Bldg. Prairie Lakes AEA, ICCC 330 Avenue M Fort Dodge, Iowa	February 24, 2004 10 a.m.
	Public Library 529 Pierce St. Sioux City, Iowa	February 24, 2004 10 a.m.
	Public Library 21 E. Third St. Spencer, Iowa	February 24, 2004 10 a.m.
	ICN Room, Sixth Floor Lucas State Office Bldg. Des Moines, Iowa	February 24, 2004 10 a.m.
Lead professional certification; lead-based paint activities, amendments to ch 70 IAB 2/4/04 ARC 3134B (ICN Network)	Room 550, Fifth Floor 411 Third St. SE Cedar Rapids, Iowa	February 24, 2004 10 a.m.
	Room 101, Dubuque Downtown Northeast Iowa Community College 700 Main St. Dubuque, Iowa	February 24, 2004 10 a.m.
	Turner Room, Green Valley AEA 1405 N. Lincoln Creston, Iowa	February 24, 2004 10 a.m.
	Room 304, Kahl Educational Center 326 W. Third St. Davenport, Iowa	February 24, 2004 10 a.m.
	Loess Hills AEA 24997 Hwy 92 Council Bluffs, Iowa	February 24, 2004 10 a.m.
	Room 106, Activity Center NIACC 500 College Dr. Mason City, Iowa	February 24, 2004 10 a.m.

PUBLIC HEALTH DEPARTMENT[641] (Cont'd)
(ICN Network)

Conference Room A Ottumwa Regional Health Center 1001 E. Pennsylvania Ottumwa, Iowa	February 24, 2004 10 a.m.
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Public Library 529 Pierce St. Sioux City, Iowa	February 24, 2004 10 a.m.
Public Library 21 E. Third St. Spencer, Iowa	February 24, 2004 10 a.m.
ICN Room, Sixth Floor Lucas State Office Bldg. Des Moines, Iowa	February 24, 2004 10 a.m.

PUBLIC SAFETY DEPARTMENT[661]

Fire safety requirements for residential care facilities, 5.950 IAB 2/18/04 ARC 3173B	Conference Room Fire Marshal Division 401 SW Seventh St. Des Moines, Iowa	March 10, 2004 9:30 a.m.
State of Iowa building code— compliance with fire safety provisions by hospitals and health care facilities, 16.130(15) IAB 2/18/04 ARC 3172B (See also ARC 3171B herein)	Conference Room Fire Marshal Division 401 SW Seventh St. Des Moines, Iowa	March 10, 2004 1:30 p.m.

RACING AND GAMING COMMISSION[491]

Agency procedures; licensing; jackpot, credit, and ticket payouts, 3.13(2), 4.6(5), 5.4(14), 6.2(3), 6.6(2), 6.17(2), 8.2(15), 12.14 IAB 2/4/04 ARC 3130B	Suite B 717 E. Court Ave. Des Moines, Iowa	February 24, 2004 9 a.m.
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TRANSPORTATION DEPARTMENT[761]

Regulations applicable to carriers, 520.1 IAB 2/4/04 ARC 3122B	DOT Conference Room Park Fair Mall 100 Euclid Ave. Des Moines, Iowa	February 26, 2004 10 a.m. (If requested)
Driver education; motorized bicycle rider education, 600.12 to 600.14; ch 634; 635.2(2), 635.6, 635.7; ch 636 IAB 2/4/04 ARC 3123B	DOT Conference Room Park Fair Mall 100 Euclid Ave. Des Moines, Iowa	February 26, 2004 1 p.m. (If requested)

UTILITIES DIVISION[199]

Electric energy adjustment clause,
20.9
IAB 2/4/04 **ARC 3135B**

Hearing Room
350 Maple St.
Des Moines, Iowa

March 3, 2004
10 a.m.

CITATION of Administrative Rules

The Iowa Administrative Code shall be cited as (agency identification number) IAC (chapter, rule, subrule, lettered paragraph, or numbered subparagraph).

441 IAC 79	(Chapter)
441 IAC 79.1(249A)	(Rule)
441 IAC 79.1(1)	(Subrule)
441 IAC 79.1(1)“a”	(Paragraph)
441 IAC 79.1(1)“a”(1)	(Subparagraph)

The Iowa Administrative Bulletin shall be cited as IAB (volume), (number), (publication date), (page number), (ARC number).

IAB Vol. XII, No. 23 (5/16/90) p. 2050, ARC 872A

Due to reorganization of state government by 1986 Iowa Acts, chapter 1245, it was necessary to revise the agency identification numbering system, i.e., the bracketed number following the agency name.

“Umbrella” agencies and elected officials are set out below at the left-hand margin in CAPITAL letters.

Divisions (boards, commissions, etc.) are indented and set out in lowercase type under their statutory “umbrellas.”

Other autonomous agencies which were not included in the original reorganization legislation as “umbrella” agencies are included alphabetically in small capitals at the left-hand margin, e.g., BEEF INDUSTRY COUNCIL, IOWA[101].

The following list will be updated as changes occur:

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AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

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Soil Conservation Division[27]

ATTORNEY GENERAL[61]

AUDITOR OF STATE[81]

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BLIND, DEPARTMENT FOR THE[111]

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CIVIL RIGHTS COMMISSION[161]

COMMERCE DEPARTMENT[181]

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Higher Education Loan Authority[284]

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FAIR BOARD[371]

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 Workforce Development Center Administration Division[877]

ARC 3170B

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 159.5(11) and 163.1, the Department of Agriculture and Land Stewardship hereby gives Notice of Intended Action to amend Chapter 64, “Infectious and Contagious Diseases,” Iowa Administrative Code.

The purpose of these amendments is to modify and clarify Iowa’s low pathogenic avian influenza (H5 and H7 subtypes) control program.

Any interested persons may make written comments or suggestions on these proposed amendments until 4:30 p.m. on March 9, 2004. Such written materials should be directed to Dr. John Schiltz, State Veterinarian, Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 East Ninth Street, Des Moines, Iowa 50319; or faxed to (515)281-4282. E-mail comments may be sent to John.Schiltz@idals.state.ia.us.

No waiver provision is included in these amendments because 21—Chapter 8 allows for waivers in appropriate cases and applies to these amendments.

Pursuant to Iowa Code Supplement section 17A.4(3), the Department finds that the fiscal impact of these amendments does not meet the threshold requirements.

These amendments are intended to implement Iowa Code chapter 163.

The following amendments are proposed.

ITEM 1. Amend rule 21—64.185(163) by adding the following **new** definitions in alphabetical order:

“House/housing facilities” means the individual barn that houses the poultry.

“Slaughter/disposal” means the removal or depopulation of the poultry flock.

ITEM 2. Amend rule 21—64.187(163) as follows:

21—64.187(163) Surveillance procedures. Breeders that participate in, and qualify under, the USDA, APHIS, NPIP U.S. Avian Influenza Clean Program meet or exceed the surveillance provisions of this plan and are exempt from further certification under this rule. For poultry flocks, surveillance procedures shall include the following:

64.187(1) Turkeys.

a. ~~Slaughter~~ *Slaughter/disposal* testing. Twenty blood samples shall be collected at *slaughter/disposal* and forwarded to an approved laboratory for LPAI testing.

b. Sick flock testing. Twenty blood samples shall be collected two weeks after the onset of respiratory disease and forwarded to an approved laboratory for LPAI testing.

c. Routine serologic testing. A test for LPAI should be included.

64.187(2) Laying chickens and quail.

a. *Preslaughter/disposal* testing. Twenty blood samples shall be collected and forwarded to an approved laboratory

for LPAI testing within 30 days prior to depopulation *or disposal*.

b. Sick flock testing. Twenty blood samples shall be collected two weeks after the onset of respiratory disease and forwarded to an approved laboratory for LPAI testing.

c. Routine serologic testing. A test for LPAI should be included.

64.187(3) Broiler chickens.

a. ~~Slaughter~~ *Slaughter/disposal* testing. Twenty blood samples shall be collected at *slaughter/disposal* and forwarded to an approved laboratory for LPAI testing.

b. Sick flock testing. Twenty blood samples shall be collected two weeks after the onset of respiratory disease and forwarded to an approved laboratory for LPAI testing.

c. Routine serologic testing. A test for LPAI should be included.

ITEM 3. Amend rule 21—64.189(163) as follows:

21—64.189(163) Investigation of LPAI affected poultry identified through surveillance. All poultry diagnosed at an approved laboratory as infected with LPAI must be traced back to the flock *or farm* of origin.

All flocks ~~of origin~~ having contact with affected or exposed poultry as determined by the designated epidemiologist must be investigated epidemiologically. All ~~flocks~~ *farms* of origin and flocks having contact with affected or exposed poultry must be quarantined, pending the results of the epidemiological investigation.

ITEM 4. Amend paragraph **64.191(2)“e”** by adding the following **new** subparagraph (6):

(6) Eggs that are sold as “nest run” and are not washed and sanitized must be moved directly to only an “off-line” breaking operation for pasteurization and used for breaking only. The egg handling materials must be handled as described in (5) above.

ITEM 5. Amend rule 21—64.192(163) as follows:

21—64.192(163) Cleaning and disinfecting. The ~~premises~~ *housing facilities* must be cleaned and disinfected under state supervision within 15 days after affected poultry have been removed.

ARC 3186B

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 159.5 and 162.16, the Department of Agriculture and Land Stewardship hereby gives Notice of Intended Action to amend Chapter 67, “Animal Welfare,” Iowa Administrative Code.

This proposed amendment is intended to create a regulatory structure for the regulation of facilities that wish to provide day care services for dogs. The proposed new rule establishes facility and operational requirements that a dog day care must meet to obtain and retain a license.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

Any interested person may make written suggestions or comments on the proposed amendment until 4:30 p.m. on March 9, 2004. Such written material should be directed to Dr. David Schmitt, Assistant State Veterinarian, Animal Industry Bureau, Department of Agriculture and Land Stewardship, Wallace State Office Building, Des Moines, Iowa 50319. Comments may also be submitted by fax to (515) 281-4282 or by E-mail to David.Schmitt@idals.state.ia.us.

There are no waiver provisions in this amendment; however, the Department's general waiver rules apply to this proposed amendment.

This amendment is intended to implement Iowa Code chapter 162.

The following amendment is proposed.

Amend 21—Chapter 67 by adding the following **new** rule:

21—67.11(162) Dog day care.

67.11(1) Definition.

"Dog day care" means a facility licensed as a commercial kennel or a boarding kennel and designed and operated with the intention that a dog admitted to the facility is allowed, in compliance with this rule, to mingle and interact with other dogs in one or more playgroups operating in the facility. The purpose of a dog day care is to allow dogs participating in the day care to become socialized through interaction in playgroups with other compatible dogs. A kennel that operates as a dog day care shall not provide overnight boarding or other kennel activities unless, during the time that the day care operation is closed, the kennel is operated in a manner consistent with applicable kennel rules including, but not limited to, paragraph 67.2(1)"k" that restricts the commingling of dogs.

67.11(2) Facility requirements. A facility licensed to be a dog day care shall comply with the following facility requirements:

a. Buildings shall be of adequate structure and maintained in good repair so as to ensure protection of dogs from injury.

b. Shelter shall be provided to allow access to shade from direct sunlight and regress from exposure to rain or snow. Heat, insulation, or bedding adequate to provide comfort shall be provided when the atmospheric temperature is below 50° F or below that temperature to which the particular dogs are acclimated. Indoor facilities shall be provided for all dogs.

c. Indoor and outdoor facilities shall at all times be provided with ventilation by means of doors, windows, vents, air conditioning or direct flow of fresh air that is adequate to provide for the good health and comfort of the dogs. Such ventilation shall be environmentally provided to minimize drafts, moisture condensation, odors or stagnant vapors of excreta.

d. Ample lighting shall be provided by natural or artificial means or both during sunrise to sunset hours to allow efficient cleaning of the facilities and routine inspection of the facilities and dogs contained therein.

e. Ceilings, walls, floors, furniture, and play equipment shall be constructed to lend themselves to efficient cleaning and sanitizing. Such surfaces shall be kept in good repair and maintained so that they are substantially impervious to moisture. Floors and walls to a height of four feet shall have finished surfaces. Upholstered furniture or carpeting shall not be permitted in that portion of the facility to which dogs have access.

f. Food supplies and bedding materials shall be stored to adequately protect them from contamination or infestation by vermin or other factors that would render the food or bed-

ding unclean. Separate storage facilities shall be maintained for cleaning and sanitizing equipment and supplies.

g. Washrooms, basins or sinks shall be provided within or be readily accessible to each facility for maintaining cleanliness among animal caretakers and sanitizing of food and water utensils.

h. Equipment shall be available for removal and disposal of all waste materials from the building to minimize vermin infestation, odors and disease hazards. Drainage systems shall be functional to achieve the above purposes.

i. Facilities shall be provided to isolate any dog that becomes sick or injured or that becomes otherwise incompatible with the other dogs.

j. Outdoor dog runs and exercise areas shall be of sound construction and kept in good repair so as to safely contain the dogs therein without injury. Floors shall be concrete, gravel or materials which can be regularly cleaned and kept free of waste accumulation. Grass runs and exercise areas are permissible provided adequate ground cover is maintained, holes are kept filled and the ground cover is not allowed to become overgrown.

k. Group interaction is permitted for dogs that are compatible with one another.

l. The play area for dogs shall provide for a minimum of 75 square feet per dog.

67.11(3) Sanitation requirements. A facility licensed to be a dog day care shall comply with the following sanitation standards:

a. All areas to which a dog has access shall be cleaned and sanitized a minimum of once in each 24-hour period and more frequently as may be necessary to reduce disease hazards and odors. Sanitizing shall be done by washing the surfaces with hot water and soap or detergent, followed by the application of a safe and effective disinfectant. Runs and exercise areas having gravel or other nonpermanent surface materials shall be sanitized by periodic removal of soiled materials, application of suitable disinfectants, and replacement with clean surface materials.

b. An effective program shall be established for the control of vermin infestation.

67.11(4) Operations. A facility licensed to be a dog day care shall comply with the following operational standards:

a. A dog, including a dog owned by the day care owner or a day care employee, shall be admitted into a day care only after the day care has:

(1) Subjected the dog to a preentry screening process that adequately evaluates the temperament of the dog, the dog's ability to interact with other dogs in a positive manner, and the dog's ability to interact with humans in a positive manner. The screening shall include, but is not limited to, obtaining a social history of the dog from the dog's owner. A written record of the testing shall be maintained by the facility for the time the dog is enrolled in the day care.

(2) Obtained from the dog's owner documentation of the medical history of the dog, including the dog's current vaccination status against distemper and rabies, unless exempted by direct, written recommendation of the owner's veterinarian or exempted by Iowa Code section 351.33 or 351.42.

(3) Determined through documentation or from obvious visual inspection that the dog is at least eight weeks of age.

(4) Obtained documentation that the dog has been spayed or neutered, if the dog is over six months of age.

(5) Obtained a written acknowledgment from the dog's owner that the owner understands the inherent risk of injury or disease when dogs owned by different people are allowed

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to commingle. This written acknowledgment shall be separately signed or initialed by the dog's owner.

b. The day care shall separate dogs in the day care into playgroups comprised of compatible dogs. Dogs of incompatible personalities or temperament shall be maintained separately.

c. The day care shall not admit any dog into the day care if the dog has a predisposition to be possessive of either the facility or a person owning or working in the facility.

d. The day care shall make advance arrangements with a veterinarian to provide emergency veterinary care for dogs at the day care.

e. A sick, diseased or injured dog shall be immediately removed from the playgroup and isolated. If circumstances indicate that immediate veterinary care is required, the dog shall be taken to a veterinarian or a veterinarian shall be called to examine the dog. The veterinarian can be either a veterinarian whose services have been contracted for by the day care or the veterinarian designated by the dog's owner, if a timely examination by that veterinarian is feasible.

f. Feeding of dogs and giving of snacks to a dog shall only be provided when the dog receiving the food or snack is outside the vision of the other dogs in the playgroup.

g. A day care shall not establish a playgroup composed of more than 15 dogs.

h. A day care shall employ sufficient staffing so that there is a minimum of one person assigned to each playgroup. The person supervising a playgroup shall be in continuous visual or auditory contact with the playgroup at all times.

ARC 3176B**ARCHITECTURAL EXAMINING BOARD[193B]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 544A.29, the Architectural Examining Board hereby gives Notice of Intended Action to amend Chapter 2, "Registration," Iowa Administrative Code.

The amendment to Chapter 2 clarifies the Board's processes for imposing penalties and additional requirements when a registrant fails to fulfill the mandatory continuing education requirements. This amendment is subject to waiver or variance pursuant to 193—Chapter 5.

Consideration will be given to all written suggestions or comments on the proposed amendment received on or before March 9, 2004. Comments should be addressed to Glenda Loving, Architectural Examining Board, 1920 S.E. Hulsizer, Ankeny, Iowa 50021, or faxed to (515)281-7411. E-mail may be sent to glenda.loving@iowa.gov.

This amendment is intended to implement Iowa Code chapters 17A and 544A.

The following amendment is proposed.

Amend subrule 2.5(5) as follows:

2.5(5) When a registrant appears to be in violation of mandatory continuing education requirements, the board may, *on a first offense*, in lieu of proceeding to a contested case hearing on the denial of a renewal application as provided in rule 193—7.40(546,272C), offer a registrant the opportunity to sign a consent order. While the terms of the consent order will be tailored to the specific circumstances at issue, the consent order will typically impose a penalty between \$50 and \$250, depending on the severity of the violation; ; establish deadlines for compliance; ; and *require that the registrant complete hours equal to double the deficiency in addition to the required hours*; and may impose additional educational requirements on the registrant. *Any additional hours completed in compliance with the consent order cannot again be claimed at the next renewal. The board will address subsequent offenses on a case-by-case basis.* A registrant is free to accept or reject the offer. If the offer of settlement is accepted, the registrant will be issued a renewed certificate of registration and will be subject to disciplinary action if the terms of the consent order are not complied with. If the offer of settlement is rejected, the matter will be set for hearing, if timely requested by the applicant pursuant to 193—subrule 7.40(1).

ARC 3180B**EDUCATIONAL EXAMINERS BOARD[282]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 14, "Issuance of Practitioner's Licenses and Endorsements," Chapter 17, "Renewal of Licenses," Chapter 19, "Coaching Authorization," and Chapter 21, "Behind-the-Wheel Driving Instructor Authorization," Iowa Administrative Code.

The proposed amendments increase fees for practitioner licenses and authorizations. Fees were last increased in 1998 from \$25 to \$50. Most licensure fees will be increased by \$10 for a five-year period, from \$50 to \$60, equating to a \$2 per year increase. The authorization fees would be increased from \$10 to \$25 to align with the Board's other authorization fees. The Class E licensure fee is increased from \$100 to \$125.

A waiver provision is not included. The Board has adopted a uniform waiver rule.

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Thursday, March 11, 2004, at 2 p.m. in Room 3 North, Third Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319.

At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments. Persons who wish to make oral presentations at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, East 14th Street and Grand

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Avenue, Des Moines, Iowa 50319-0147, or at (515)281-5849, prior to the date of the public hearing.

Any interested person may make written comments or suggestions on the proposed amendments before 4 p.m. on Friday, March 12, 2004. Written comments and suggestions should be addressed to Dr. Anne E. Kruse, Executive Director, Board of Educational Examiners, at the above address, or sent by E-mail to anne.kruse@ed.state.ia.us, or by fax to (515)281-7669. Any person who intends to attend the public hearing and requires special accommodations for specific needs, such as a sign language interpreter, should contact the office of the Executive Director at (515)281-5849.

These amendments are intended to implement Iowa Code chapter 272.

The following amendments are proposed.

ITEM 1. Amend rule 282—14.121(272) as follows:

282—14.121(272) Licensure and authorization application fee. All application and authorization licensure fees are nonrefundable.

14.121(1) Issuance and renewal of licenses, ~~authorizations~~, and statements of professional recognition. ~~The fee for the issuance of each initial practitioner's license, the evaluator license, the statement of professional recognition, and the coaching authorization and the renewal of each license, evaluator approval license, statement of professional recognition, and coaching authorization shall be \$50.~~

a. *Fees for the issuance of licenses effective September 1, 2004:*

(1) *The fee for the issuance of the initial license shall be \$50.*

(2) *The fee for the issuance of the standard license shall be \$60.*

(3) *The fee for the issuance of the master educator license shall be \$60.*

(4) *The fee for the issuance of the substitute license shall be \$60.*

(5) *The fee for the issuance of the provisional occupational (career and technical) secondary license shall be \$60.*

(6) *The fee for the issuance of the occupational (career and technical) secondary license shall be \$60.*

(7) *The fee for the issuance of the statement of professional recognition shall be \$60.*

(8) *The fee for the issuance of the professional administrator license shall be \$60.*

(9) *The fee for the issuance of the evaluator license shall be \$60.*

(10) *The fee for the issuance of the administrator, counselor, or teacher exchange license shall be \$60.*

(11) *The fee for the issuance of the Class A, B, C, or D license shall be \$60.*

(12) *The fee for the issuance of the Class E license shall be \$125.*

b. *Fees for the renewal of licenses effective September 1, 2004:*

(1) *The fee for the renewal of the initial license shall be \$50.*

(2) *The fee for the renewal of the standard license shall be \$60.*

(3) *The fee for the renewal of the master educator license shall be \$60.*

(4) *The fee for the renewal of the substitute license shall be \$60.*

(5) *The fee for the renewal of the occupational (career and technical) secondary license shall be \$60.*

(6) *The fee for the renewal of the professional administrator license shall be \$60.*

(7) *The fee for the renewal of the evaluator license shall be \$60.*

(8) *The fee for the renewal of the AEA administrator license shall be \$60.*

14.121(2) Adding endorsements. *Effective September 1, 2004, The the fee for the addition of each endorsement to a license, following the issuance of the initial license and endorsement(s), shall be \$25 50. Applicants who are unable to secure a college or university recommendation for the addition of a new endorsement may ask the board of educational examiners to analyze transcripts. Applicants who request board of educational examiners transcript analysis shall be assessed a \$60 transcript evaluation fee for each new endorsement requested. This fee shall be in addition to the fee for adding the endorsement.*

14.121(3) Duplicate licenses, authorizations, and statements of professional recognition. No change.

14.121(4) Evaluation fee. *Effective September 1, 2004, Each each applicant from an out-of-state institution for initial licensure shall include, in addition to the basic fee for the issuance of a license, a one-time nonrefundable \$50 60 evaluation fee.*

Effective September 1, 2004, Each each application or request for a statement of professional recognition shall include a one-time nonrefundable \$50 60 evaluation fee.

14.121(5) One-year Class E license. The fee for the issuance of a one-year Class E license based on an expired Class A, Class B, Class C, Class D or ~~teacher~~ two-year exchange license shall be \$100 125.

14.121(6) Late renewal fee fees. *Effective September 1, 2000 2004, an additional fee of \$25 per calendar month, not to exceed \$100 150, shall be imposed if a renewal application, two-year exchange license, or Class A, B, C, D, or E license is submitted after the date of expiration of a practitioner's license. The board may waive a late renewal fee upon application for waiver of the fee by a practitioner. Waiver of the late fee will be granted only upon a showing of extraordinary circumstances rendering imposition of the fee unreasonable.*

ITEM 2. Amend subrule 17.7(3) as follows:

17.7(3) Applicants ~~An applicant~~ renewing a professional administrator's or area education agency administrator's license must submit documentation of completion of the evaluator training required in Iowa Code section 284.10. ~~Applicants~~ *An applicant* may apply for the five-year administrator license upon completion of this training.

The fee for the five-year administrator license is \$50 60. If the term of the renewed administrator license extends beyond the term of the applicant's ~~current~~ valid administrator or evaluator license, the fee for the renewed administrator or evaluator license will be prorated to equal \$10 12 per year of extension. ~~For example, if the applicant completed the evaluator training course in the fall of 2002, the applicant will receive a new administrator license with a 2003 issue date.~~

a. The following are examples of the prorated fees for this extension.

(1) If the applicant holds an administrator practitioner's current license that is valid until 2003 extended by five years, the fee cost for the new license is \$50 60.

(2) If the applicant's administrator practitioner's current license is valid until 2004 extended by four years, the fee cost for the new license is \$40 48.

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(3) If the ~~applicant's administrator~~ *practitioner's current* license is ~~valid until 2005 extended by three years~~, the fee cost for the new license is \$30 36.

(4) If the ~~applicant's administrator~~ *practitioner's current* license is ~~valid until 2006 extended by two years~~, the fee cost for the new license is \$20 24.

(5) If the ~~applicant's administrator~~ *practitioner's current* license is ~~valid until 2007 extended by one year~~, the fee cost for the new license is \$10 12.

(6) *If the practitioner's current license is extended by less than one year, the cost is \$12.*

b. A waiver of this requirement may apply under the following conditions with appropriate documentation of any of the following:

(1) The person is engaged in active duty in the military service of this state or of the United States.

(2) The application of this requirement would impose an undue hardship on the person for whom the waiver is requested.

(3) The person is an administrator in an accredited non-public school.

(4) The person is practicing a licensed profession outside this state.

(5) The person is otherwise subject to circumstances that would preclude the person from satisfying the approved child and dependent adult abuse training in this state.

ITEM 3. Amend subrule 19.5(2) as follows:

19.5(2) Renewal. Five planned renewal activities/courses related to athletic coaching approved in accordance with guidelines approved by the board of educational examiners. Beginning on or after July 1, 2000, each applicant for the renewal of a coaching authorization shall have completed one renewal activity/course relating to the knowledge and understanding of professional ethics and legal responsibilities of coaches. A one-year extension of the holder's coaching authorization will be issued if all requirements for the renewal of the coaching authorization have not been met. This extension is not renewable. *Effective September 1, 2004, The the cost of fee for the one-year extension shall be \$10 25.*

ITEM 4. Amend rule 282—21.2(272,321) as follows:

282—21.2(272,321) Validity. All fees are nonrefundable. The behind-the-wheel driving instructor authorization shall be valid for one calendar year, and it shall expire one year after issue date. *Effective September 1, 2004, The the fee for the issuance of the behind-the-wheel driving instructor authorization shall be \$10 25.*

ITEM 5. Amend rule 282—21.5(272,321) as follows:

282—21.5(272,321) Renewal. All fees are nonrefundable. *Effective September 1, 2004, The the behind-the-wheel driving instructor authorization may be renewed upon application, payment of the \$10 25 renewal fee and verification of successful completion of:*

21.5(1) Providing behind-the-wheel instruction for a minimum of 12 clock hours during the previous school year; and

21.5(2) Successful participation in at least one department of transportation-sponsored or department of transportation-approved behind-the-wheel instructor refresher course; and

21.5(3) Effective September 1, 2002, the child and dependent adult abuse training approved by the state abuse education review panel. A waiver of this requirement may apply under the following conditions with appropriate documentation of any of the following:

a. The person is engaged in active duty in the military service of this state or of the United States.

b. The application of this requirement would impose an undue hardship on the person for whom the waiver is requested.

c. The person is practicing a licensed profession outside this state.

d. The person is otherwise subject to circumstances that would preclude the person from satisfying the approved child and dependent adult abuse training in this state.

e. The person has previously renewed a license or authorization issued by the board of educational examiners and, at that time, reported the completion, within the past five years, of child and dependent adult abuse training approved by the state abuse education review panel.

ARC 3167B**ENVIRONMENTAL PROTECTION
COMMISSION[567]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 459.103 and 459.312, the Environmental Protection Commission hereby proposes to amend Chapter 65, "Animal Feeding Operations," Iowa Administrative Code.

The proposed amendments implement statutory changes to manure management plan requirements such that manure application rates from a confinement feeding operation are based on the phosphorus index. Additionally, some provisions of rule 567—65.17(459) were reorganized to improve clarity, and standard tables referred to in this chapter have been updated to reflect current research data provided by Iowa State University. Other requirements within rule 567—65.17(459) have been amended to improve the Department's implementation of the manure management plan program. When the phosphorus index is implemented in a manure management plan, a summary or copy of the conservation plan for highly erodible cropland will no longer be required as the inputs to the phosphorus index will determine the conservation practices utilized to minimize soil loss.

Any interested person may make written suggestions or comments on the proposed amendments on or before March 26, 2004. Written comments should be directed to Gene Tinker, Department of Natural Resources, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319-0034; fax (515)281-8895; E-mail gene.tinker@dnr.state.ia.us.

Persons are invited to present oral or written comments at public hearings which will be held as follows:

Maar Park Conservation Center 2943 Highway 9 Ainsworth	March 22, 2004 26 p.m.
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Henry A. Wallace Bldg. Fourth Floor Conference Room 502 East 9th Street Des Moines	March 23, 2004 1:30 p.m.
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Atlantic Public Library 507 Poplar Street Atlantic	March 24, 2004 6 p.m.
Spencer School Administrative Offices 23 East 7th Street Spencer	March 25, 2004 6 p.m.
Gilbertson Nature Center 2258 A Avenue Elgin	March 26, 2004 6 p.m.

At the hearing, people will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

These amendments are intended to implement Iowa Code section 459.312.

The following amendments are proposed.

ITEM 1. Amend **567—Chapter 65** by replacing references to Iowa Code chapter 455B with the appropriate corresponding references to Iowa Code chapter 459.

ITEM 2. Amend rule 567—65.17(455B) as follows:

567—65.17(455B 459) Manure management plan content requirements. All manure management plans submitted after January 1, 1999, or when forms are available, whichever is later, are to be submitted on forms or electronically as prescribed by the department. The plans shall include all of the information specified in Iowa Code section 455B.203 459.312 and as described below.

65.17(1) General.

a. A confinement feeding operation that is required to submit a manure management plan to the department shall not apply manure in excess of the nitrogen use levels necessary to obtain optimum crop yields. ~~Nitrogen application rates shall be based on total nitrogen content of the manure unless the calculations are submitted to show that crop usage rates based on plant available nitrogen have not been exceeded for the crop schedule submitted.~~ When a phosphorus index is required in a manure management plan as provided in 65.17(1)"d," manure application rates shall be determined on a field basis and shall not exceed the rates determined in conjunction with the phosphorus index. Information to complete the required calculations may be obtained from the tables in this chapter, actual testing samples or from other credible sources including, but not limited to, Iowa State University, the United States Department of Agriculture (USDA), a licensed professional engineer, or an individual certified as a crop consultant under the American Registry of Certified Professionals in Agronomy, Crops, and Soils (ARCPACS) program, the Certified Crop Advisors (CCA) program, or the Registry of Environmental and Agricultural Professionals (REAP) program.

b. Manure management plans shall comply with the minimum manure control requirements of 65.2(455B 459) and the requirements for land application of manure in 65.3(455B 459).

c. ~~All manure~~ Manure management plans shall include all of the following:

(1) The name of the owner and the name of the confinement feeding operation, including mailing address and telephone number.

(2) The name of the contact person for the confinement feeding operation, including mailing address and telephone number.

(3) The location of the confinement feeding operation and ~~the animal weight capacity of the operation identified by county, township, section, 1/4 section and, if available, the 911 address.~~

(4) The animal unit capacity of the confinement feeding operation and, if applicable, the animal weight capacity.

d. A person who submits a manure management plan shall include a phosphorus index as part of the manure management plan as follows:

(1) A person who submitted an original manure management plan prior to April 1, 2002, shall submit a phosphorus index with the first manure management plan update on and after [the four-year anniversary date after these amendments become effective].

(2) A person who submitted an original manure management plan on or after April 1, 2002, but prior to [the date that is 60 days after these amendments become effective], shall submit a phosphorus index with the first manure management plan update on and after [the two-year anniversary date after these amendments become effective].

(3) A person who submits an original manure management plan on and after [the date that is 60 days after these amendments become effective] shall include the phosphorus index as part of the original manure management plan and manure management plan updates.

65.17(2) Manure management plans for sales of manure. Selling manure means the transfer of ownership of the manure for monetary or other valuable consideration. Selling manure does not include a transaction where the consideration is the value of the manure, or where an easement, lease or other agreement granting the right to use the land only for manure application is executed.

a. Confinement feeding operations that will sell dry manure as a commercial fertilizer or soil conditioner regulated by the Iowa department of agriculture and land stewardship (IDALS) under Iowa Code chapter 200 or 200A shall submit a copy of their site-specific IDALS license or documentation that manure will be sold pursuant to Iowa Code chapter 200 or 200A, along with the department-approved manure management plan form for sales of dry manure.

b. A confinement feeding operation not fully covered by paragraph "a" above and that has an established practice of selling manure, or the a confinement feeding operation that contains an animal species for which selling manure is a common practice, shall submit a manure management plan that includes the following:

(1) ~~An~~ Until a phosphorus index is required as part of the manure management plan, an estimate of the number of acres required for manure application shall be calculated by dividing the total nitrogen available to be applied from the confinement feeding operation by the crop usage rate. Crop usage rate may be estimated by using a corn crop usage rate factor and an estimate of the optimum crop yield for the property in the vicinity of the confinement feeding operation.

(2) When a phosphorus index is required as part of the manure management plan, an estimate of the number of acres required for manure application shall be calculated by one of the following methods:

1. Dividing the total phosphorus (as P_2O_5) available to be applied from the confinement feeding operation by the corn crop removal of phosphorus. The corn crop removal of phosphorus may be estimated by using the phosphorus removal rate in Table 4a at the end of this chapter and an estimate of the optimum crop yield for the property in the vicinity of the operation.

2. Totaling the quantity of manure that can be applied to each available field based on application rates determined in

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conjunction with the phosphorus index in accordance with 65.17(17), and ensuring that the total quantity that can be applied is equal to or exceeds the manure annually generated at the operation.

(2) (3) The total nitrogen available to be applied from the confinement feeding operation.

(4) The total phosphorus (as P_2O_5) available to be applied from the confinement feeding operation if the phosphorus index is required in accordance with 65.17(1) "d."

(3) (5) An estimate of the annual animal production and manure volume or weight produced.

(4) (6) A manure sales form, if manure will be sold, shall include the following information:

1. A place for the name and address of the buyer of the manure.

2. A place for the quantity of manure purchased.

3. The planned crop schedule and optimum crop yield usage rate for the crops indicated in the crop schedule yields.

4. A place for the manure application methods and the timing of manure application.

5. A place for the location of the field where the manure will be applied including the number of acres where the manure will be applied.

6. A place for the manure application rate.

7. When a phosphorus index is required as part of a manure management plan in accordance with 65.17(1) "d," a place for a phosphorus index of each field receiving manure including the factors used in the calculation.

(5) (7) Statements of intent if the manure will be sold. The number of acres indicated in the statements of intent shall be sufficient according to the manure management plan to apply the manure from the confinement feeding operation. The permit holder for an existing confinement feeding operation with a construction permit may submit past records of manure sales instead of statements of intent. The statements of intent shall include the following information:

1. The name and address of the person signing the statement.

2. A statement indicating the intent of the person to purchase the confinement feeding operation's manure.

3. The location of the farm where the manure can be applied including the total number of acres available for manure application.

4. The signature of the person who may purchase the confinement feeding operation's manure.

(6) (8) The owner shall maintain in the owner's records a current manure management plan and copies of all of the manure sales forms completed and signed by each buyer of the manure and the applicant for three years after each sale. Effective [one year after these amendments become effective], the owner shall maintain in the owner's records all of the manure sales forms for four years after each sale. An owner of a confinement feeding operation shall not be required to maintain current statements of intent as part of the manure management plan.

65.17(3) Manure management plan for nonsales of manure. Confinement feeding operations that will not sell all of their manure shall submit the following for that portion of the manure which will not be sold:

a. Calculations to determine the land area required for manure application.

b. The total nitrogen available to be applied from the confinement feeding operation.

c. The planned crop schedule and optimum crop yield and crop usage rate for the crops indicated in the crop schedule yields.

d. Manure application methods and timing of the application.

e. The location of manure application.

f. An estimate of the annual animal production and manure volume or weight produced.

g. Methods, structures or practices that will be used to reduce soil loss and prevent surface water pollution.

h. Methods or practices that will be utilized to reduce odor if spray irrigation equipment is used to apply manure.

i. When a phosphorus index is required as part of the manure management plan in accordance with 65.17(1) "d," the following are required:

(1) The total phosphorus (as P_2O_5) available to be applied from the confinement feeding operation.

(2) A phosphorus index of each field in the manure management plan including the factors used in the calculation.

65.17(4) Manure management plan calculations to determine land area required for manure application.

a. The number of acres of cropland needed for manure application shall be calculated by dividing the total nitrogen available to be applied from the confinement feeding operation by the nitrogen crop usage rate. Calculations shall show adequate land area to apply all manure from the confinement feeding operation for the planned crop schedule.

b. Manure from a confinement feeding operation may be applied in excess of the annual crop usage rate if soil testing determines that phosphorus or potassium levels are below recommended levels. However, maximum manure application rates shall not exceed 1.5 times the annual crop nitrogen usage rate; or, that rate which provides the recommended amount of phosphorus or potassium, whichever is more limiting, to obtain the optimum crop yield. Manure application rates for the calculations shall be determined as follows:

(1) Until a phosphorus index is required in accordance with 65.17(1) "d," the requirements of 65.17(18) shall be followed.

(2) When a phosphorus index is required in accordance with 65.17(1) "d," the requirements of 65.17(17) shall be followed.

c. Nitrogen in addition to that allowed in the manure management plan may be applied up to the amounts, indicated by soil or crop nitrogen test results, necessary to obtain the optimum crop yield.

d. Operations evaluated with the master matrix pursuant to 65.10(3) that claim points for additional separation distance for the land application of manure must maintain those distances for each year of the manure management plan.

65.17(5) Total nitrogen and total phosphorus (as P_2O_5) available from the confinement feeding operation.

a. To determine the nitrogen content of the manure per year, use the factors in Table 3, "Annual Pounds of Nitrogen Per Space of Capacity," multiplied by the number of spaces shall be used. To determine total phosphorus (as P_2O_5) content of the manure per year, the factors in Table 3a, "Annual Pounds of Phosphorus Per Space of Capacity," multiplied by the number of spaces shall be used. If the table is tables are not used to determine the nitrogen or phosphorus content of the manure per year, other credible sources for standard table values or the actual nitrogen and phosphorus content of the manure may be used. The actual nitrogen and phosphorus content shall be determined by a laboratory analysis along with measured volume or weight of the manure from the manure storage structure or from a manure storage structure with similar design and management as similar to the confinement feeding operation's manure storage structure.

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b. Credit for nitrogen from legume production in the year prior to growing corn or other grass crops shall be deducted from the total nitrogen to be applied according to the crop schedule submitted. Any planned commercial fertilizer nitrogen shall also be deducted from the total nitrogen that can be applied from manure sources. If an actual sample is used to represent the nutrient content of manure, the sample shall be taken in accordance with Iowa State University extension publication PM 1558, "Management Practices: How to Sample Manure for Nutrient Analysis." The department may require documentation of the manure sampling protocol or take a split sample to verify the nutrient content of the operation's manure.

c. The correction factor for nitrogen losses shall be determined for the method of application by the following, or from other credible sources for standard nitrogen loss values.

Surface-apply dry with no incorporation	0.70
Surface-apply liquids with no incorporation	0.75
Surface-apply liquid or dry with incorporation within 24 hours	0.95
Surface-apply liquid or dry with incorporation after 24 hours	0.80
Knifed in or soil injection of liquids	0.98
Irrigated liquids with no incorporation	0.60

65.17(6) Calculating the crop usage rate *Optimum crop yield and crop schedule.*

a. The optimum crop yield shall be determined for the cropland where the manure is to be applied. Any of the following methods for calculating the optimum crop yield may be used. To determine the optimum crop yield, the applicant may either exclude the lowest crop yield for the period of the crop schedule in the determination or allow for a crop yield increase of 10 percent. In using these methods, adjustment to update yield averages to current yield levels may be made if it can be shown that the available yield data is not representative of current yields. *The optimum crop yield shall be determined using any of the following methods for the cropland where the manure is to be applied:*

(1) Soil survey interpretation record. The plan shall include a soil type map showing types *soil map units* for the fields where manure will be applied. The optimum crop yield for each field shall be determined by using the weighted average of the soil interpretation record yields for the soils on the cropland where the manure is to be applied. Soil interpretation records from the Natural Resources Conservation Service shall be used to determine yields based on soil type *map units*.

(2) Consolidated farm service agency yields. The plan shall include a copy of the consolidated farm service agency's determined crop yield or verified yield data for the cropland where the manure is to be applied. *USDA county crop yields. The plan shall use the county yield data from the USDA Iowa Agricultural Statistics Service.*

(3) Countywide crop insurance yields. The plan shall include a copy of the county average yields established for crops covered by the catastrophic crop insurance program administered by the consolidated farm service agency. *Proven yield methods. Proven yield methods may only be used if a minimum of the most recent three years of yield data for the crop is submitted. These yields can be proven on a field-by-field or farm-by-farm basis. Crop disaster years may be excluded when a USDA Farm Service Agency crop disaster payment or crop insurance payment is made for the field or farm. Excluded years shall be replaced by the most recent nondisaster years. Proven yield data shall be submitted with an original manure management plan, and any new proven*

yield data shall be submitted as part of the next annual manure management plan update. Proven yield data that is re-used is not required to be resubmitted but shall be maintained at the site with the current manure management plan. Any of the following proven yield methods may be used:

1. Proven yields for USDA Farm Service Agency. The plan shall use proven yield data or verified yield data for Farm Service Agency programs.

2. Proven yields for multiperil crop insurance. Yields established for the purpose of purchasing multiperil crop insurance shall be used as proven yield data.

3. Proven yields from other methods. The plan shall use the proven yield data and indicate the method used in determining the proven yield.

(4) Multiperil crop insurance proven yields. Yields established for the purpose of purchasing multiperil crop insurance shall be used as proven yield data. A copy of the yield information on the multiperil crop insurance form shall be submitted as proven yield verification. The optimum yield determined for each crop shall be the average of at least three years' yield data.

(5) Proven yields. The plan shall include the proven yield for the cropland that will be used for manure application and indicate the method used in determining the proven yield. Proven yields can only be used if a minimum of the most recent three years of yield data is submitted. The proven yields may exclude years in which a crop disaster occurred on the field or farm. These yields can be proven on a field-by-field or farm-by-farm basis.

(6) USDA county crop yields. The plan shall include the county yield data from the USDA Iowa Agricultural Statistics Service.

b. Crop schedule. Crop schedules shall include the name and total acres of the planned crop on a field-by-field or farm-by-farm basis where manure application will be made. A map can may be used to indicate crop plans *schedules* by field or farm. These plans *The planned crop schedule* shall name the crop that is crop(s) planned to be grown in each successive growing season *for the length of the crop rotation* beginning with the crop planned or actually grown during the year this plan is submitted *or the first year manure will be applied*. Records shall be maintained of a multiyear planned crop schedule, including the crop grown, or planned to be grown for the current year and the planned crops for successive years. The confinement feeding operation owner shall not be penalized for exceeding the nitrogen or phosphorus application rate for an unplanned crop, if crop schedules are altered because of weather, farm program changes, market factor changes, or other unforeseeable circumstances.

c. Crop usage rates. Crop nitrogen requirements may be based on the values in Table 4 at the end of this chapter or other credible sources. The corn crop usage rate and the optimum corn crop yield instead of the table value for a legume crop for those years in the crop schedule that are part of a corn/legume rotation may be used.

65.17(7) No change.

65.17(8) Location of manure application.

a. The manure management plan shall identify each farm where the manure will be applied, the number of acres that will be available for the application of manure from the confinement feeding operation, and the basis under which the land is available.

b. The original manure management plan shall include a copy of each written agreement executed with the owner of the land where manure will be applied. The written agreement shall indicate the acres on which manure from the con-

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finement feeding operation may be applied and the length of the agreement. A written agreement is not required if the land is owned or rented for crop production by the owner of the confinement feeding operation.

c. The current manure management plan must also include a copy of each written agreement executed with the landowner when the location where the manure will be applied to land not owned or rented for crop production by the owner of the confinement feeding operation is changed. If a present location becomes unavailable for manure application, additional land for manure application shall be identified in the current manure management plan prior to the next manure application period.

d. *For manure management plan updates, written agreements that remain valid for land included in the original manure management plan need not be resubmitted. Written agreements for land not included in the original manure management plan or previous updates must be submitted as part of the next update after the execution of the agreement.*

65.17(9) No change.

65.17(10) Methods to reduce soil loss and potential surface water pollution. The manure management plan shall include an identification of the methods, structures or practices that will be used to prevent or diminish soil loss and potential surface water pollution during the application of manure. The plan shall include a summary or copy of the conservation plan for the cropland where manure from the animal feeding operation will be applied if the manure will be applied on highly erodible cropland. *The summary or a copy of the conservation plan for cropland included in the original manure management plan or subsequent updates need not be resubmitted with manure management plan updates. However, if manure will be applied on highly erodible cropland not included in the original manure management plan or subsequent updates, the summary or a copy of the conservation plan must be submitted with the next manure management plan update.* The conservation plan shall be the conservation plan approved by the local soil and water conservation district or its equivalent. The summary of the conservation plan shall identify the methods, structures or practices that are contained in the conservation plan. *When a phosphorus index is required in accordance with 65.17(1)"d," in lieu of a summary or copy of the conservation plan, the manure management plan shall indicate for each field in the plan, the crop rotation, tillage practices and supporting practices used to calculate sheet and rill erosion for the phosphorus index and shall identify the highly erodible cropland where manure will be applied.* The manure management plan may include additional information such as whether the manure will be injected or incorporated or the type of manure storage structure.

65.17(11) No change.

65.17(12) Current manure management plan. The owner of a confinement feeding operation ~~which~~ *who* is required to submit a manure management plan shall maintain a current manure management plan at the site of the confinement feeding operation ~~unless other arrangements acceptable to the department are made so that a copy of the current plan can be made available to the department within two working days after being requested~~ *or at a residence or office of the owner or operator of the operation within 30 miles of the site.* The plan shall include completed manure sales forms for a confinement feeding operation from which manure is sold. If manure management practices change, a person required to submit a manure management plan shall make appropriate changes consistent with this rule. If values other than the

standard table values are used for manure management plan calculations, the source of the values used shall be identified.

65.17(13) Record keeping. Records shall be maintained by the owner of a confinement feeding operation ~~which~~ *who* is required to submit a manure management plan. This recorded information shall be maintained for three years following the year of application or for the length of the crop rotation, whichever is greater. *Effective [one year after these amendments become effective], records shall be maintained for four years following the year of application or for the length of the crop rotation, whichever is greater.* Records shall be maintained at the site of the confinement feeding operation ~~unless other arrangements acceptable to the department are made so that a copy can be made available to the department within two working days after being requested by the department for inspection pursuant to Iowa Code section 455B.203 or at a residence or office of the owner or operator of the facility within 30 miles of the site.~~ Records to demonstrate compliance with the manure management plan shall include the following:

a. ~~Methods of application when manure from the confinement feeding operation was applied. Factors used to calculate the manure application rate:~~

- (1) *Optimum yield for the planned crop.*
- (2) *Types of nitrogen credits and amounts.*
- (3) *Remaining crop nitrogen needed.*
- (4) *Nitrogen content and first year nitrogen availability of the manure.*

(5) *Phosphorus content of the manure if required in accordance with 65.17(3)"i." If an actual sample is used, documentation shall be provided.*

b. ~~Date(s) when the manure from the confinement feeding operation was applied or sold. If phosphorus-based application rates are used, the following shall be included:~~

- (1) *Crop rotation.*
- (2) *Phosphorus removed by crop harvest of that crop rotation.*

c. ~~Location of the field where the manure from the confinement feeding operation was applied, including the number of acres. Maximum allowable manure application rate.~~

d. ~~The Actual manure application rate. information:~~

(1) *Methods of application when manure from the confinement feeding operation was applied.*

(2) *Date(s) when the manure from the confinement feeding operation was applied.*

(3) *Location of the field where the manure from the confinement feeding operation was applied, including the number of acres.*

(4) *The manure application rate.*

e. *Date(s) and application rate of commercial nitrogen and phosphorus on fields that received manure.*

f. *When a phosphorus index is required in accordance with 65.17(1)"d," a copy of the current soil test lab results for each field in the manure management plan.*

g. *For sales of manure under 65.17(2)"b," record-keeping requirements of 65.17(2)"b"(8) shall be followed.*

65.17(14) Record inspection. The department may inspect a confinement feeding operation at any time during normal working hours and may inspect the manure management plan and any records required to be maintained. As required in Iowa Code section 455B.203(5) 459.312(12), Iowa Code chapter 22 shall not apply to the records which shall be kept confidential by the department and its agents and employees. The contents of the records are not subject to disclosure except as follows:

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a. Upon waiver by the owner of the confinement feeding operation.

b. In an action or administrative proceeding commenced under this chapter. Any hearing related to the action or proceeding shall be closed.

c. When required by subpoena or court order.

65.17(15) No change.

65.17(16) *Soil sampling requirements for fields where the phosphorus index must be used. Soil samples shall be obtained from each field in the manure management plan at least once every four years. Each soil sample shall be analyzed for phosphorus and pH. The soil sampling protocol shall meet all of the following requirements:*

a. Acceptable soil sampling strategies include, but are not limited to, grid sampling, management zone sampling, and soil type sampling. Procedural details can be taken from Iowa State University extension publication PM 287, "Take a Good Soil Sample to Help Make Good Decisions," NCR-13 Report 348, "Soil Sampling for Variable-Rate Fertilizer and Lime Application," or other credible soil sampling publications.

b. Each soil sample must be a composite of at least ten soil cores distributed throughout the sampling area, with each core containing soil from the top six inches of the soil profile.

c. Each soil sample shall represent no more than ten acres.

d. Soil analysis must be performed by a lab enrolled in the IDALS soil testing certification program.

e. The soil phosphorus test method must be an appropriate method for use with the phosphorus index. If soil pH is greater than or equal to 7.4, soil phosphorus data from the Bray-1 extraction method is not acceptable for use with the phosphorus index.

65.17(17) *Use of the phosphorus index. Manure application rates shall be determined in conjunction with the use of the Iowa Phosphorus Index as specified by the USDA Natural Resources Conservation Service (NRCS) Iowa Technical Note No. 25.*

a. The phosphorus index shall be used on each individual field in the manure management plan. The fields must be contiguous and shall not be divided by a thoroughfare or a watercourse as each is defined in this chapter. Factors to be considered when a field is defined may include, but are not limited to, cropping system, erosion rate, soil phosphorus concentration, nutrient application history, and the presence of site-specific soil conservation practices.

b. When the phosphorus index is used on a field, the erosion rate from the most erosive soil map unit that is at least 10 percent of the total field area shall be considered the erosion rate for the entire field.

c. The average (arithmetic mean) soil phosphorus concentration of a field shall be used in the phosphorus index.

d. Soil phosphorus concentration data is considered valid for use in the phosphorus index if the data is four years old or less and meets the requirements of 65.17(16).

e. For an original manure management plan, previous soil sampling data that does not meet the requirements of 65.17(16) may be used in the phosphorus index if the data is four years old or less. In the case of fields for which soil sampling data is used that does not meet the requirements of 65.17(16), the fields must be soil sampled according to the requirements of 65.17(16) no more than one year after the manure management plan is approved.

f. The following are the manure application rate requirements for fields that are assigned the phosphorus index

site vulnerability ratings below as determined by the NRCS Iowa Technical Note No. 25 to the NRCS 590 standard rounded to the nearest one-hundredth:

(1) Very Low or Low (0-2).

1. Manure shall not be applied in excess of a nitrogen-based rate in accordance with 65.17(18).

2. If, pursuant to 65.17(19), manure is applied at phosphorus-based rates within soil sampling periods on fields in the Very Low or Low risk category, each soil sample may represent up to 20 acres for the next required soil sampling.

(2) Medium (>2-5).

1. Manure shall be applied at phosphorus-based rates in accordance with 65.17(19). Manure may be applied at nitrogen-based rates in accordance with 65.17(18) if soil conservation and manure management practices are planned so that the phosphorus index rating is not increased above the Medium risk category.

2. If, pursuant to 65.17(19), manure is applied at phosphorus-based rates within soil sampling periods on fields in the Medium risk category, each soil sample may represent up to 20 acres for the next required soil sampling.

(3) High or Very High (>5).

1. No manure shall be applied unless soil conservation or manure management practices are adopted which reduce the phosphorus index to at least the Medium risk category.

2. If soil conservation or manure management practices are adopted which reduce the phosphorus index to Medium, manure may be applied according to the Medium risk criteria.

g. Additional commercial fertilizer may be applied as follows on fields receiving manure:

(1) Phosphorus fertilizer may be applied in addition to phosphorus provided by the manure up to amounts recommended by soil tests and Iowa State University extension publication PM 1688, "General Guide for Crop Nutrient Recommendations in Iowa."

(2) Nitrogen fertilizer may be applied up to the amounts indicated by soil test nitrogen results or crop nitrogen test results as necessary to obtain the optimum crop yield.

h. Updating the phosphorus index.

(1) When any inputs to the phosphorus index change, an operation shall recalculate the phosphorus index and adjust the application rates if necessary. If a change in the phosphorus index requires a change in the application rate, the information shall be submitted with the next annual manure management plan update.

(2) If additional land becomes available for manure application, the phosphorus index shall be calculated to determine the manure application rate before manure is applied, and all required information shall be submitted with the next annual manure management plan update.

(3) An operation must submit a complete manure management plan using a new phosphorus index for each field in the manure management plan a minimum of once every four years.

65.17(18) *Requirements for application of a nitrogen-based manure rate to a field.*

a. Nitrogen-based application rates shall be based on the total nitrogen content of the manure unless the calculations are submitted to show that nitrogen crop usage rates based on plant-available nitrogen have not been exceeded for the crop schedule submitted.

b. The correction factor for nitrogen losses shall be determined for the method of application by the following or

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from other credible sources for nitrogen volatilization correction factors.

Knifed in or soil injection of liquids	0.98
Surface-apply liquid or dry with incorporation within 24 hours	0.95
Surface-apply liquid or dry with incorporation after 24 hours	0.80
Surface-apply liquids with no incorporation	0.75
Surface-apply dry with no incorporation	0.70
Irrigated liquids with no incorporation	0.60

c. Nitrogen needed for the crop shall be based on the optimum crop yields as determined in 65.17(6) and crop nitrogen usage rate factor values in Table 4 at the end of this chapter or other credible sources.

d. A nitrogen-based manure rate shall account for legume production in the year prior to growing corn or other grass crops and shall account for any planned commercial fertilizer application.

65.17(19) Requirements for application of a phosphorus-based manure rate to a field.

a. Phosphorus removal by harvest for each crop in the crop schedule shall be determined using the optimum crop yield as determined in 65.17(6) and phosphorus removal rates of the harvested crop from Table 4a at the end of this chapter or other credible sources. Phosphorus crop removal shall be determined by multiplying optimum crop yield by the phosphorus removal rate of the harvested crop.

b. Phosphorus removal by the crop schedule shall be determined by summing the phosphorus crop removal values determined in 65.17(19)“a” for each crop in the crop schedule.

c. The phosphorus applied over the duration of the crop schedule shall be less than or equal to the phosphorus removed with harvest during that crop schedule as calculated in 65.17(19)“b” unless additional phosphorus is recommended by soil tests and Iowa State University extension publication PM 1688, “General Guide for Crop Nutrient Recommendations in Iowa.”

d. Additional requirements for phosphorus-based rates.

(1) No single manure application shall exceed the nitrogen-based rate of the planned crop receiving the particular manure application.

(2) No single manure application shall exceed the rate that applies to the expected amount of phosphorus removed with harvest by the next four anticipated crops in the crop schedule.

e. If the actual crop schedule differs from the planned crop schedule, then any surplus or deficit of phosphorus shall be accounted for in the subsequent manure application.

f. When manure is applied according to phosphorus-based requirements, nitrogen fertilizer in addition to nitrogen provided by manure may be applied to meet the crop's remaining need for nitrogen.

ITEM 3. Amend **567—Chapter 65**, Table 3, as follows:

TABLE 3
Annual Pounds of Nitrogen Per Space of Capacity
Source: PM 1811, Managing Manure Nutrients for Crop Production

Swine	Space	Liquid, Pit* or Basin**	Liquid, Lagoon***	Solid Manure
Nursery, 25 lb.	1 head	2	1	5
Grow-finish, 150 lb.				
Formed storage*				
Dry feeders	1 head	21		29
Wet/dry feeders	1 head	23 19		29
Earthen storage**	1 head	14		29
Lagoon***	1 head		6	29
Gestation, 400 lb.	1 head	44 27	5	39
Sow & Litter, 450 lb.	1 crate	32	11	86
Farrow-nursery	Per sow in breeding herd	22	8	85
Farrow-finish	Per sow in breeding herd	150	44	172
Dairy, Confined	Space	Liquid, Pit* or Basin**	Liquid, Lagoon***	Solid Manure
Cows, 1200 & up lb.	1 head	129 164	59	239 140
Heifers, 900 lb.	1 head	97 81	44	179 65
Calves, 500 lb.	1 head	54 45	24	100 15
Veal calves, 250 lb.	1 head	27 22	12	50 10
Dairy herd	Per productive cow in herd	203 169	87	393 180
Beef, Confined	Space	Liquid, Pit* or Basin**	Liquid, Lagoon***	Solid Manure
Mature cows, 1000 lb.	1 head	105	23	147
Finishing, 900 lb.	1 head	95	19	132
Feeder calves, 500 lb.	1 head	53	11	73
Poultry	Space			Dry Manure
Layer, cages	1000 head			367
Broiler, litter	1000 head			585

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<u>Poultry (cont'd)</u>	<u>Space</u>	<u>Dry Manure</u>
Turkeys, litter	1000 head	1400

* Formed manure storage structure

** Earthen manure storage basin

*** Anaerobic lagoon

ITEM 4. Amend **567—Chapter 65** by adopting the following **new** Table 3a:

TABLE 3a
Annual Pounds of Phosphorus (as P₂O₅) Per Space of Capacity
Source: PM 1811, Managing Manure Nutrients for Crop Production

<u>Swine</u>	<u>Space</u>	<u>Liquid, Pit* or Basin**</u>	<u>Liquid, Lagoon***</u>	<u>Solid Manure</u>
Nursery, 25 lb.	1 head	1	0.7	3
Grow-finish, 150 lb.				
Formed storage*				
Dry feeders	1 head	15		18
Wet/dry feeders	1 head	13		18
Earthen storage**	1 head	10		18
Lagoon***	1 head		5	18
Gestation, 400 lb.	1 head	27	4	25
Sow & Litter, 450 lb.	1 crate	26	8	55
Farrow-nursery	Per sow in breeding herd	18	6	55
Farrow-finish	Per sow in breeding herd	109	33	110
<u>Dairy, Confined</u>	<u>Space</u>	<u>Liquid, Pit* or Basin**</u>	<u>Liquid, Lagoon***</u>	<u>Solid Manure</u>
Cows, 1200 & up lb.	1 head	78	44	42
Heifers, 900 lb.	1 head	38	33	20
Calves, 500 lb.	1 head	22	18	5
Veal calves, 250 lb.	1 head	10	9	3
Dairy herd	Per productive cow in herd	80	66	80
<u>Beef, Confined</u>	<u>Space</u>	<u>Liquid, Pit* or Basin**</u>	<u>Liquid, Lagoon***</u>	<u>Solid Manure</u>
Mature cows, 1000 lb.	1 head	66	17	73
Finishing, 900 lb.	1 head	59	14	66
Feeder calves, 500 lb.	1 head	33	8	37
<u>Poultry</u>	<u>Space</u>			<u>Dry Manure</u>
Layer, cages	1000 head			840
Broiler, litter	1000 head			585
Turkeys, litter	1000 head			1400

* Formed manure storage structure

** Earthen manure storage basin

*** Anaerobic lagoon

ITEM 5. Amend **567—Chapter 65** by adopting the following **new** Table 4a:

TABLE 4a
Phosphorus Removal for Iowa Crops
Source: PM 1688, General Guide for Crop Nutrient Recommendations in Iowa

<u>CROP</u>	<u>UNITS</u>	<u>P₂O₅ (pounds/unit)</u>
Corn	bu.	0.375
Corn silage	ton (65% H ₂ O)	3.5
Soybeans	bu.	0.8
Alfalfa	ton	12.5
Oat and straw	bu.	0.4

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CROP	UNITS	P ₂ O ₅ (pounds/unit)
Wheat	bu.	0.6
Smooth brome	ton	9
Orchard grass	ton	14
Tall fescue	ton	12
Switch grass	ton	12
Sorghum-sudan	ton	12
Vetch	ton	12
Red clover	ton	12
Perennial rye grass	ton	12
Timothy	ton	9
Wheat straw	ton	4
Oat straw	ton	5

ITEM 6. Amend **567—Chapter 65**, Table 5, as follows:TABLE 5
Manure Production Per Space of Capacity

		Daily		Yearly
		Liquid, Pit* or Basin**	Liquid, Lagoon***	Solid Manure
<u>Swine</u>	<u>Space</u>			
Nursery, 25 lb.	1 head	0.2 gal	0.7 gal	0.34 tons
Grow-finish, 150 lb.				
Formed storage*				
Dry feeders	1 head	1.2 gal		2.05 tons
Wet/dry feeders	1 head	0.84 gal		2.05 tons
Earthen storage**	1 head	1.2 gal		2.05 tons
Lagoon***	1 head		4.1 gal	2.05 tons
Gestation, 400 lb.	1 head	3.0 gal	3.7 gal	2.77 tons
Sow & Litter, 450 lb.	1 crate	3.5 gal	7.5 gal	6.16 tons
Farrow-nursery	Per sow in breeding herd	2.2 gal	5.4 gal	6.09 tons
Farrow-finish	Per sow in breeding herd	9.4 gal	30 gal	12.25 tons
<u>Dairy, Confined</u>	<u>Space</u>	<u>Liquid, Pit* or Basin**</u>	<u>Liquid, Lagoon***</u>	<u>Solid Manure</u>
Cows, 1200 & up lb.	1 head	18.0 gal	40.1 gal	14.93 tons
Heifers, 900 lb.	1 head	8.8 gal	29.9 gal	14.95 tons
Calves, 500 lb.	1 head	4.9 gal	16.5 gal	8.30 tons
Veal calves, 250 lb.	1 head	2.5 gal	8.2 gal	4.15 tons
Dairy herd	Per productive cow in herd	18.5 gal	59.8 gal	32.77 tons
<u>Beef, Confined</u>	<u>Space</u>	<u>Liquid, Pit* or Basin**</u>	<u>Liquid, Lagoon***</u>	<u>Solid Manure</u>
Mature cows, 1000 lb.	1 head	7.2 gal	15.7 gal	12.23 tons
Finishing, 900 lb.	1 head	6.5 gal	13.1 gal	11.00 tons
Feeder calves, 500 lb.	1 head	3.6 gal	7.3 gal	6.11 tons
<u>Poultry</u>	<u>Space</u>			<u>Dry Manure</u>
Layer, cages	1000 head			10.5 tons
Broiler, litter	1000 head			9.00 tons
Turkeys, litter	1000 head			35.00 tons

* Formed manure storage structure

** Earthen manure storage basin

*** Anaerobic lagoon

ARC 3163B**HUMAN SERVICES
DEPARTMENT[441]****Notice of Termination**

Pursuant to the authority of Iowa Code sections 17A.22, 22.11, and 217.6, the Department of Human Services terminates rule making initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin on October 29, 2003, as **ARC 2901B**.

The Notice proposed to amend Chapter 7, "Appeals and Hearings," Chapter 9, "Public Records and Fair Information Practices," Chapter 13, "Program Evaluation," Chapter 28, "Policies for All Institutions," Chapter 75, "Conditions of Eligibility," and Chapter 93, "PROMISE JOBS Program," Iowa Administrative Code, to implement technical changes, including compliance with Public Law 104-191, the Health Insurance Portability and Accountability Act (HIPAA) of 1996.

These amendments were also Adopted and Filed Emergency and were published on the same date as **ARC 2902B**. The purpose of the Notice was to solicit comment. Since no comments were received and no changes are required, there is no need to proceed further with rule making for **ARC 2901B**.

ARC 3162B**HUMAN SERVICES
DEPARTMENT[441]****Notice of Termination**

Pursuant to the authority of Iowa Code sections 234.6 and 249A.4, the Department of Human Services terminates the rule making initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin on December 10, 2003, as **ARC 3024B**.

The Notice of Intended Action proposed to amend Chapter 51, "Eligibility," Chapter 52, "Payment," and Chapter 75, "Conditions of Eligibility," Iowa Administrative Code, to make annual adjustments to the State Supplementary Assistance and Medicaid programs based on annual Supplemental Security Income cost-of-living adjustments and consumer price index figures.

These amendments were also Adopted and Filed Emergency and published on the same date as **ARC 3023B**. The Notice was published to solicit comments. Since no comments were received and no changes are required, there is no need to proceed further with rule making for **ARC 3024B**.

ARC 3185B**HUMAN SERVICES
DEPARTMENT[441]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code Supplement section 235.7, the Department of Human Services proposes to amend Chapter 202, "Foster Care Services," Iowa Administrative Code.

These amendments implement the legislative directive in 2003 Iowa Acts, chapter 117, for the Department to establish local "transition committees" to review the plans for preparing youth in foster care for the transition to adulthood. Iowa Code Supplement section 232.2(4)"f" requires the agency preparing a case permanency plan for a child 16 years of age or older to include a section on services to assist the child in preparing for the transition from foster care to independent living. The purpose of the local transition committees is to review and approve these plans and to identify and address gaps in the services and supports needed to meet the needs of these youth.

These amendments also:

- Update the term "regional administrator" to "service area manager" and the term "region" to "service area" for consistency throughout the chapter. These amendments reflect the current organization of the Department.
- Update a form number and remove references to obsolete versions of the case permanency plan.

These amendments do not provide for waivers in specified situations because the requirements for the committees are set by statute and the other changes are technical in nature.

Any interested person may make written comments on the proposed amendments on or before March 10, 2004. Comments should be directed to the Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

These amendments are intended to implement Iowa Code Supplement section 235.7.

The following amendments are proposed.

ITEM 1. Amend rule **441—202.1(234)** as follows:

Rescind the definition of "regional administrator."

Amend the definition of "department" as follows:

"Department" shall mean the Iowa department of human services and includes the ~~county and regional~~ local offices of the department.

Adopt the following new definition:

"Service area manager" shall mean the department employee responsible for managing department offices and personnel within the service area and for implementing policies and procedures of the department.

ITEM 2. Amend subrules **202.2(5)**, **202.6(5)**, **202.8(1)**, **202.8(2)**, and **202.13(3)** by replacing the phrase "regional administrator" with the phrase "service area manager" wherever it appears.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 3. Amend subrules 202.6(2) and 202.6(4) as follows:

202.6(2) For placement in a foster family home supervised directly by department staff, Form SS-2605-0 470-0716, Foster Family Placement Contract, shall be completed by the provider and department representatives. A new foster family placement contract shall be completed when the rate of payment or special provisions change.

202.6(4) The case permanency plan shall be reviewed at least every six months to assure ~~ensure~~ appropriateness of the child's placement. A copy of the subsequent case plan, ~~including the Face Sheet, Form 427-1020, the Problem and Responsibility List, Form 427-1023 (if any of the information has changed or if there have been any additions), and the Case Permanency Plan Review, Form 427-1021, and report to the court~~ shall be submitted to the court every six months unless the court orders a different frequency for reports.

ITEM 4. Amend rule 441—202.7(234) as follows:

441—202.7(234) Out-of-region area placements.

202.7(1) When the department makes a placement of a child in the foster care system out of the ~~region~~ *service area* in which the child resides, this placement shall occur only when there is no appropriate placement within the ~~region~~ *service area*, when the placement is necessary to facilitate reunification of the child with the parents, or when an out-of-~~region~~ *area* agency is closer to the community where the child resides than an in-~~region~~ *area* agency offering the same services.

202.7(2) The authority for approving out-of-~~region~~ *area* placements rests with both the placing and receiving ~~regional administrators~~ *service area managers*.

202.7(3) Transfer of responsibility for supervision, planning, and visitation shall be approved by the placing and receiving ~~regional administrators~~ *service area managers* and, when appropriate, by the court.

This rule is intended to implement Iowa Code section 234.6(6)“b.”

ITEM 5. Amend rule 441—202.15(234) as follows:

Amend subrule 202.15(4) as follows:

202.15(4) Copies of the initial and subsequent case permanency plans shall be provided to the child, the child's parents, and the foster care provider. Copies shall also be provided to the following, if involved in services to the child: the juvenile court officer, the judge, the child's attorney, the child's guardian ad litem, the child's guardian, the child's custodian, the child's court-appointed special advocate, the parents' attorneys, the county attorney, the state foster care review board, and any other interested parties identified on Form 427-1020, Face Sheet in the plan.

Rescind subrule **202.15(6)**.

ITEM 6. Amend subrule **202.16(1)**, paragraph “f,” as follows:

f. References from the ~~regional administrator~~ *service area manager* for the department ~~region~~ *service area* in which the proposed psychiatric medical institution for children would be located, the chief juvenile court officer of the judicial district in which the proposed psychiatric medical institution for children would be located and the applicant's licensor from the department of inspections and appeals or department of public health.

ITEM 7. Amend rule 441—202.17(232) as follows:

Amend the catchwords as follows:

441—202.17(232) Regional Area group care targets.

Amend subrule 202.17(1) as follows:

Amend the introductory paragraph and paragraph “a,” introductory paragraph, as follows:

202.17(1) Regional Area target. A group care budget target shall be established for each departmental ~~region~~ *service area*, which shall be based on the annual statewide group care appropriation established by the general assembly.

a. The department and the judicial branch shall jointly develop a formula for allocating the group care appropriation among the departmental ~~regions~~ *service areas*. The formula shall be based on:

Amend paragraphs “c,” “d,” and “e” as follows:

c. Upon written agreement of the affected ~~regional administrators~~ *service area managers* and chief juvenile court officers, ~~regions~~ *service areas* may transfer part of their group care budget from one ~~region~~ *service area* to another. A ~~region~~ *service area* may exceed its budget target figure up to 5 percent during the fiscal year, providing that the overall funding allocation by the department for all child welfare services in the ~~region~~ *service area* is not exceeded.

d. Notwithstanding the statewide appropriation established in this subrule, a budget established in a ~~region's~~ *service area's* group care plan pursuant to Iowa Code section 232.143 may be exceeded, a group care placement may be ordered, and state payment may be made if the review organization finds that the placement is necessary to meet the child's service needs and if the ~~region~~ *service area* has additional funds transferred from another ~~region~~ *service area* or if the ~~region~~ *service area* is within 5 percent of its group care budget target figure pursuant to 441—paragraph 202.17(1)“c.”

The department and juvenile court services shall work together to ensure that a ~~region's~~ *service area's* group care expenditures shall not exceed the funds allocated to the ~~region~~ *service area* for group care in the fiscal year.

e. If at any time after September 30, 1998, annualization of a ~~region's~~ *service area's* current expenditures indicates a ~~region~~ *service area* is at risk of exceeding its group foster care expenditure target under Iowa Code section 232.143 by more than 5 percent, the department and juvenile court services shall examine all group foster care placements in that ~~region~~ *service area* in order to identify those which might be appropriate for termination. In addition, any aftercare services believed to be needed for the children whose placements may be terminated shall be identified. The department and juvenile court services shall initiate action to set dispositional review hearings for the placements identified. In the dispositional review hearing, the juvenile court shall determine whether needed aftercare services are available and whether termination of the placement is in the best interest of the child and the community.

Amend subrule 202.17(2) as follows:

202.17(2) Regional plan For achieving target. For each of the departmental ~~regions~~ *service areas*, representatives appointed by the department and juvenile court services shall establish a plan for containing the expenditure for children placed in group care within the budget target allocated to that ~~region~~ *service area*. The plan shall include monthly targets and strategies for developing alternatives to group care placements.

The plans shall also ensure potential group care referrals are reviewed by the review organization prior to submission of a recommendation for group care placement to the court.

Each ~~regional area~~ *plan* shall be established in advance of the fiscal year to which the ~~regional~~ *plan* applies. To the extent possible, the department and the juvenile court shall coordinate the planning required under this subrule with

HUMAN SERVICES DEPARTMENT[441](cont'd)

planning for services paid under Iowa Code section 232.141, subsection 4. The department's ~~regional administrator~~ *service area manager* shall communicate regularly, as specified in the ~~regional area~~ plan, with the juvenile courts within the ~~region~~ *service area* concerning the current status of the ~~regional~~ plan's implementation.

ITEM 8. Adopt **new** rule 441—202.18(235) as follows:

441—202.18(235) Local transition committees. Local transition committees shall be established in each of the departmental service areas. The service area manager or designee shall determine the number of local transition committees needed within the service area, set operating policies and procedures, and appoint committee membership.

202.18(1) Purpose. The purpose of local transition committees, as established by Iowa Code Supplement section 235.7, is to ensure that the transition needs of youth in foster care who are 16 years of age or older have been addressed in order to assist the youth in preparing for the transition from foster care to adulthood.

202.18(2) Membership. Each committee shall have a designated number of members.

a. The standing committee membership may include, but is not limited to:

- (1) Department staff involved with child welfare, adult services, or transition planning.
- (2) Juvenile court services staff.
- (3) Adult service system staff.
- (4) Education staff.
- (5) Service care provider representation.
- (6) Others knowledgeable about community resources.

b. Additionally, nonstanding membership may include those knowledgeable about the youth, including the child's court-appointed special advocate, guardian ad litem, and service or care providers.

c. In areas where teams or boards already in existence are involved in review and planning for youth needs, such as the foster care review board or child welfare funding decategorization boards, such teams or boards may serve as local transition committees.

202.18(3) Duties. Local transition committees shall address the transition needs of youth in foster care who are 16 years of age or older and who have a case permanency plan as defined in Iowa Code Supplement section 232.2. Each committee shall have operating policies and procedures to carry out the duties below.

a. Each committee shall establish a process for review and approval of written transition plans for youth for whom the committee has placement responsibility that meets a continuum of case needs and coordinates with local transition planning protocol. The process may include a paper review or an in-person review, or both, according to case need.

b. The committee may be involved when the youth is at least 16 years of age, but shall be involved in reviewing and approving a youth's transition plan before the youth reaches age 17½.

c. In reviewing a youth's transition plan, the committee shall identify and act to address gaps existing in services or supports available that would assist the youth in the transition from foster care to adulthood.

d. For those youth expected to need services as adults, the committee shall ensure that the transition plan was developed with the participation of any person reasonably expected to be a service provider when the youth becomes an adult or to become responsible for the costs of services at that time.

e. The committee shall ensure that transition planning and review is coordinated with overall case planning and review. Committee review and approval shall be indicated in the youth's case permanency plan.

f. With respect to meetings involving a specific youth receiving foster care and the youth's family, the local transition committees are not subject to Iowa Code chapter 21.

g. The information and records of or provided to a local transition committee regarding a youth receiving foster care and the youth's family are not public records pursuant to Iowa Code chapter 22 when the records relate to the foster care placement and transition needs of the youth.

h. Members of the committees are subject to the standards of confidentiality set forth in Iowa Code sections 600.16, 217.30 and 235A.15.

202.18(4) Report. The service area manager or designee shall submit a report on transition planning committees to the department's division of behavioral, developmental and protective services for families, adults and children. The report shall be submitted annually by October 1 for the immediately preceding fiscal year. The report shall include, but not be limited to, the following:

- a. The geographical area covered for each committee within the service area.
- b. Standing committee membership for each committee.
- c. The number of cases reviewed by each committee.
- d. Identification of barriers to successful transition and gaps in community services or supports.
- e. Suggestions for ways to transition youth from foster care to adulthood more effectively.

This rule is intended to implement Iowa Code Supplement section 235.7.

ARC 3165B**PROFESSIONAL LICENSURE
DIVISION[645]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Physician Assistant Examiners hereby gives Notice of Intended Action to amend Chapter 325, "Administrative and Regulatory Authority for the Board of Physician Assistant Examiners," and Chapter 326, "Licensure of Physician Assistants"; rescind Chapter 329, "Discipline for Physician Assistants," and adopt new Chapter 329 with the same title; and amend Chapter 330, "Fees," Iowa Administrative Code.

The proposed amendments amend the rule regarding public meetings by adopting subrules covering the conduct of persons who attend public meetings; amend board contact procedures for address and name changes; modify language in the rules to be consistent with language in the Iowa Code; revise licensure renewal by adding mandatory reporter training requirements; define how to obtain duplicate or reissued licenses and wallet cards and fees associated with duplicate or reissued licenses and wallet cards; and rescind the current discipline chapter and adopt a new discipline chapter.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

Any interested person may make written comments on the proposed amendments no later than March 9, 2004, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075, E-mail pwilson@idph.state.ia.us.

A public hearing will be held on March 9, 2004, from 9 to 10 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

These amendments are intended to implement Iowa Code chapters 21, 147, 148C and 272C.

The following amendments are proposed.

ITEM 1. Amend subrules 325.4(2) and 325.4(3) as follows:

325.4(2) Notice of change of address. Each licensee shall notify the board ~~in writing~~ of a change of the licensee's current mailing address within 30 days after the change of address occurs.

325.4(3) Notice of change of name. Each licensee shall notify the board *in writing* of ~~any a~~ change of name within 30 days after changing the name. ~~Notification requires a notarized copy of a marriage license or a notarized copy of court documents.~~

ITEM 2. Amend the parenthetical implementation reference for rule 645—325.6(17A) as follows:
645—325.6(17A 21)

ITEM 3. Adopt **new** subrules 325.6(3) and 325.6(4) as follows:

325.6(3) The person presiding at a meeting of the board may exclude a person from an open meeting for behavior that obstructs the meeting.

325.6(4) Cameras and recording devices may be used at open meetings provided the cameras and recording devices do not obstruct the meeting. If the user of a camera or recording device obstructs the meeting by the use of such device, the person presiding at the meeting may request the user to discontinue use of the camera or device.

ITEM 4. Amend the implementation clause for **645—Chapter 325** as follows:

These rules are intended to implement Iowa Code chapters 17A, 21, 147, 148C and 272C.

ITEM 5. Rescind rule 645—326.9(148C) and adopt the following **new** rule in lieu thereof:

645—326.9(148C) License renewal.

326.9(1) The biennial license renewal period for a license to practice as a physician assistant shall begin on October 1 and end on September 30 two years later. The board shall notify the licensee at the address on record at least 60 days prior to expiration of the license.

326.9(2) An individual who was issued an initial license within six months of the license renewal date will not be required to renew the license until the subsequent renewal date two years later.

326.9(3) A licensee shall:

a. Meet the continuing education requirements of rule 645—328.2(148C) and the mandatory reporting requirements of subrule 326.9(4); and

b. Submit the completed renewal application, continuing education report form and renewal fee before the license expiration date.

326.9(4) Mandatory reporter training requirements.

a. A licensee who, in the scope of professional practice or in the licensee's employment responsibilities, examines, attends, counsels or treats children in Iowa shall indicate on the renewal application completion of two hours of training in child abuse identification and reporting in the previous five years or condition(s) for waiver of this requirement as identified in paragraph "e."

b. A licensee who, in the course of employment responsibilities, examines, attends, counsels or treats adults in Iowa shall indicate on the renewal application completion of two hours of training in dependent adult abuse identification and reporting in the previous five years or condition(s) for waiver of this requirement as identified in paragraph "e."

c. A licensee who, in the scope of professional practice or in the course of employment, examines, attends, counsels or treats both adults and children in Iowa shall indicate on the renewal application completion of training in abuse identification and reporting for dependent adults and children in the previous five years or condition(s) for waiver of this requirement as identified in paragraph "e."

Training may be completed through separate courses as identified in paragraphs "a" and "b" or in one combined two-hour course that includes curricula for identifying and reporting child abuse and dependent adult abuse. The course shall be a curriculum approved by the Iowa department of public health abuse education review panel.

d. The licensee shall maintain written documentation for five years after mandatory training as identified in paragraphs "a" to "c," including program date(s), content, duration, and proof of participation.

e. The requirement for mandatory training for identifying and reporting child and dependent adult abuse shall be suspended if the board determines that suspension is in the public interest or that a person at the time of license renewal:

(1) Is engaged in active duty in the military service of this state or the United States.

(2) Holds a current waiver by the board based on evidence of significant hardship in complying with training requirements, including an exemption of continuing education requirements or extension of time in which to fulfill requirements due to a physical or mental disability or illness as identified in 645—Chapter 328.

f. The board may select licensees for audit of compliance with the requirements in paragraphs "a" to "e."

326.9(5) When all requirements for license renewal are met, the licensee shall be sent a wallet card by regular mail.

326.9(6) A person licensed to practice as a physician assistant shall keep the license certificate and wallet card(s) displayed in a conspicuous public place at the primary site of practice.

326.9(7) Late renewal. The license shall become late when the license has not been renewed by the expiration date on the wallet card. The licensee shall be assessed a late fee as specified in 645—subrule 330.1(4). To renew a late license, the licensee shall complete the renewal requirements and submit the late fee within 30 days following the expiration date on the wallet card.

ITEM 6. Renumber rules **645—326.12(272C)** to **645—326.16(148C)** as **645—326.14(272C)** to **645—326.18(148C)** and adopt the following **new** rules:

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

645—326.12(147) Duplicate certificate or wallet card.

326.12(1) A duplicate wallet card or duplicate certificate shall be required if the current wallet card or certificate is lost, stolen or destroyed. A duplicate wallet card or a duplicate certificate shall be issued only under such circumstances.

326.12(2) A duplicate wallet card or duplicate certificate shall be issued upon receipt of the completed application for duplicate license and payment of the fee as specified in rule 645—330.1(148C).

326.12(3) If the board receives a completed application for duplicate license stating that the wallet card or certificate was not received within 60 days after being mailed by the board, no fee shall be required for issuing the duplicate wallet card or duplicate certificate.

645—326.13(147) Reissued certificate or wallet card. The board shall reissue a certificate or current wallet card upon receipt of a written request from the licensee, return of the original document and payment of the fee as specified in rule 645—330.1(148C).

ITEM 7. Rescind 645—Chapter 329 and adopt the following new chapter in lieu thereof:

CHAPTER 329

DISCIPLINE FOR PHYSICIAN ASSISTANTS

645—329.1(148C) Definitions.

“Board” means the board of physician assistant examiners.

“Discipline” means any sanction the board may impose upon licensees.

“Licensee” means a person licensed to practice as a physician assistant in Iowa.

645—329.2(148C,272C) Grounds for discipline. The board may impose any of the disciplinary sanctions provided in rule 645—329.3(272C) when the board determines that the licensee is guilty of any of the following acts or offenses.

329.2(1) Fraud in procuring a license. Fraud in procuring a license includes, but is not limited to, an intentional perversion of the truth in making application for a license to practice in this state which includes the following:

a. False representations of a material fact, whether by word or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed when making application for a license in this state, or

b. Attempting to file or filing with the board or the department of public health any false or forged diploma or certificate or affidavit or identification or qualification in making an application for a license in this state.

329.2(2) Professional incompetency. Professional incompetency includes, but is not limited to:

a. A substantial lack of knowledge or ability to discharge professional obligations within the scope of practice.

b. A substantial deviation from the standards of learning or skill ordinarily possessed and applied by other practitioners in the state of Iowa acting in the same or similar circumstances.

c. A failure to exercise the degree of care which is ordinarily exercised by the average practitioner acting in the same or similar circumstances.

d. Failure to conform to the minimal standard of acceptable and prevailing practice of a physician assistant in this state.

e. Mental or physical inability reasonably related to and adversely affecting the licensee’s ability to practice in a safe and competent manner.

f. Being adjudged mentally incompetent by a court of competent jurisdiction.

329.2(3) Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

329.2(4) Practice outside the scope of the profession.

329.2(5) Use of untruthful or improbable statements in advertisements. Use of untruthful or improbable statements in advertisements includes, but is not limited to, an action by a licensee in making information or intention known to the public which is false, deceptive, misleading or promoted through fraud or misrepresentation.

329.2(6) Habitual intoxication or addiction to the use of drugs.

a. The inability of a licensee to practice with reasonable skill and safety by reason of the excessive use of alcohol on a continuing basis.

b. The excessive use of drugs which may impair a licensee’s ability to practice with reasonable skill or safety.

329.2(7) Obtaining, possessing, attempting to obtain or possess, or administering controlled substances without lawful authority.

329.2(8) Falsification of client records.

329.2(9) Acceptance of any fee by fraud or misrepresentation.

329.2(10) Negligence by the licensee in the practice of the profession. Negligence by the licensee in the practice of the profession includes a failure to exercise due care including negligent delegation of duties or supervision of employees or other individuals, whether or not injury results; or any conduct, practice or conditions which impair the ability to safely and skillfully practice the profession.

329.2(11) Conviction of a felony related to the profession or occupation of the licensee or the conviction of any felony that would affect the licensee’s ability to practice within the profession. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

329.2(12) Violation of a regulation or law of this state, another state, or the United States, which relates to the practice of the profession.

329.2(13) Revocation, suspension, or other disciplinary action taken by a licensing authority of this state, another state, territory, or country; or failure by the licensee to report in writing to the board revocation, suspension, or other disciplinary action taken by a licensing authority within 30 days of the final action. A stay by an appellate court shall not negate this requirement; however, if such disciplinary action is overturned or reversed by a court of last resort, the report shall be expunged from the records of the board.

329.2(14) Failure of a licensee or an applicant for licensure in this state to report any voluntary agreements restricting the practice of the profession in another state, district, territory or country.

329.2(15) Failure to notify the board of a criminal conviction within 30 days of the action, regardless of the jurisdiction where it occurred.

329.2(16) Failure to notify the board within 30 days after occurrence of any judgment or settlement of malpractice claim or action.

329.2(17) Engaging in any conduct that subverts or attempts to subvert a board investigation.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

329.2(18) Failure to comply with a subpoena issued by the board, or to otherwise fail to cooperate with an investigation of the board.

329.2(19) Failure to comply with the terms of a board order or the terms of a settlement agreement or consent order.

329.2(20) Failure to pay costs assessed in any disciplinary action.

329.2(21) Submission of a false report of continuing education or failure to submit the biennial report of continuing education.

329.2(22) Failure to report another licensee to the board for any violations listed in these rules, pursuant to Iowa Code section 272C.9.

329.2(23) Knowingly aiding, assisting, procuring, or advising a person to unlawfully practice as a physician assistant.

329.2(24) Failure to report a change of name or address within 30 days after it occurs.

329.2(25) Representing oneself as a physician assistant when one's license has been suspended or revoked, or when one's license is lapsed or has been placed on inactive status.

329.2(26) Permitting another person to use the licensee's license for any purpose.

329.2(27) Permitting an unlicensed employee or person under the licensee's control to perform activities requiring a license.

329.2(28) Unethical conduct. In accordance with Iowa Code section 147.55(3), behavior (i.e., acts, knowledge, and practices) which constitutes unethical conduct may include, but need not be limited to, the following:

- a. Verbally or physically abusing a patient or client or coworker.
- b. Improper sexual contact with, or making suggestive, lewd, lascivious or improper remarks or advances to a patient, client or coworker.
- c. Betrayal of a professional confidence.
- d. Engaging in a professional conflict of interest.

329.2(29) Failure to comply with universal precautions for preventing transmission of infectious diseases as issued by the Centers for Disease Control of the United States Department of Health and Human Services.

329.2(30) The performance of a medical function without approved supervision except in cases requiring performance of evaluation and treatment procedures essential to providing an appropriate response to an emergency situation.

645—329.3(147,272C) Method of discipline. The board has the authority to impose the following disciplinary sanctions:

1. Revocation of license.
2. Suspension of license until further order of the board or for a specific period.
3. Prohibit permanently, until further order of the board, or for a specific period, the engaging in specified procedures, methods, or acts.
4. Probation.
5. Require additional education or training.
6. Require a reexamination.
7. Order a physical or mental evaluation, or order alcohol and drug screening within a time specified by the board.
8. Impose civil penalties not to exceed \$1000.
9. Issue a citation and warning.
10. Such other sanctions allowed by law as may be appropriate.

645—329.4(272C) Discretion of board. The following factors may be considered by the board in determining the nature and severity of the disciplinary sanction to be imposed:

1. The relative serious nature of the violation as it relates to ensuring a high standard of professional care to the citizens of this state;

2. The facts of the particular violation;

3. Any extenuating facts or other countervailing considerations;

4. The number of prior violations or complaints;

5. The seriousness of prior violations or complaints;

6. Whether remedial action has been taken; and

7. Such other factors as may reflect upon the competency, ethical standards, and professional conduct of the licensee.

These rules are intended to implement Iowa Code chapters 147, 148C and 272C.

ITEM 8. Amend subrule 330.1(6) as follows:

330.1(6) Duplicate *or reissued* license *certificate* fee is \$10.

ITEM 9. Renumber subrules **330.1(7)** to **330.1(9)** as **330.1(8)** to **330.1(10)** and adopt the following **new** subrule:

330.1(7) Duplicate or reissued wallet card fee is \$10.

ARC 3166B

PROFESSIONAL LICENSURE
DIVISION[645]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Physician Assistant Examiners hereby gives Notice of Intended Action to amend Chapter 326, “Licensure of Physician Assistants,” and Chapter 327, “Practice of Physician Assistants,” Iowa Administrative Code.

The proposed amendments update and clarify the rules covering the practice of physician assistants.

Any interested person may make written comments on the proposed amendments no later than March 10, 2004, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075, E-mail pwilson@idph.state.ia.us.

A public hearing will be held on March 10, 2004, from 9 to 10 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

These amendments are intended to implement Iowa Code section 147.107 and chapters 148C and 272C.

The following amendments are proposed.

ITEM 1. Amend rule **645—326.1(148C)**, definition of “remote medical site,” as follows:

“Remote medical site” means a medical clinic for ambulatory patients which is away from the main practice location of a supervising physician and in which a supervising physician is present less than 50 percent of the time the site is open.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

"Remote medical site" will not apply to nursing homes, patient homes, hospital outpatient departments, *outreach clinics*, or any location at which medical care is incidentally provided (e.g., diet center, free clinic, site for athletic physicals, jail facility).

ITEM 2. Amend subrule 327.1(1), introductory paragraph and paragraphs "e," "g," and "k," as follows:

327.1(1) The medical services to be provided by the physician assistant are those delegated by a supervising physician. The ultimate role of the physician assistant cannot be rigidly defined because of the variations in practice requirements due to geographic, economic, and sociologic factors. The high degree of responsibility a physician assistant may assume requires that, at the conclusion of the formal education, the physician assistant possess the knowledge, skills and abilities necessary to provide those services appropriate to the practice setting. The physician assistant's services may be utilized in any clinical settings including, but not limited to, the office, the ambulatory clinic, the hospital, the patient's home, extended care facilities and nursing homes. Diagnostic and therapeutic medical tasks ~~common to the physician's practice~~ may be assigned *delegated* to the physician assistant by a supervising physician after ~~the physician assistant's~~ demonstration of proficiency and competence. The medical services to be provided by the physician assistant include, but are not limited to, the following:

e. Performance of ~~office~~ surgical procedures including, but not limited to, skin biopsy, mole or wart removal, toenail removal, removal of a foreign body, arthrocentesis, incision and drainage of abscesses.

g. ~~Prenatal and postnatal care and assisting a physician in obstetrical care.~~ *Obstetrical care as delegated by the supervising physician.*

k. ~~Assisting a physician~~ *Function* in the hospital setting by performing medical histories and physical examinations, making patient rounds, recording patient progress notes and other appropriate medical records, assisting in surgery, performing or assisting with medical procedures, providing emergency medical services and issuing, transmitting and executing patient care orders ~~of as delegated by the supervising physician.~~

ITEM 3. Adopt **new** subparagraph **327.1(1)"s"(8)** as follows:

(8) Health care providers shall consider the instructions of the physician assistant to be instructions of a supervising physician if the instructions concern duties delegated to the physician assistant by the supervising physician.

ITEM 4. Rescind paragraph **327.1(1)"z."**

ITEM 5. Amend subparagraphs **327.1(2)"d"(2)** and **(3)** as follows:

(2) A physician assistant who serves on a basic ambulance or rescue squad service; ~~or and~~

(3) ~~Physician assistants~~ *A physician assistant* who ~~render~~ *renders* aid within their skills during an emergency.

ITEM 6. Rescind subrule **327.3(1)** and renumber subrules **327.3(2)** and **327.3(3)** as **327.3(1)** and **327.3(2)**.

ITEM 7. Rescind rule 645—327.4(148C) and adopt the following **new** rule in lieu thereof:

645—327.4(148C) Remote medical site.

327.4(1) A physician assistant may provide medical services in a remote medical site if one of the following three conditions is met:

a. The physician assistant has a permanent license and at least one year of practice as a physician assistant; or

b. The physician assistant with less than one year of practice has a permanent license and meets the following criteria:

(1) The physician assistant has practiced as a physician assistant for at least six months; and

(2) The physician assistant and supervising physician have worked together at the same location for a period of at least three months; and

(3) The supervising physician reviews patient care provided by the physician assistant at least weekly; and

(4) The supervising physician signs all patient charts unless the medical record documents that direct consultation with the supervising physician occurred; or

c. The physician assistant and supervising physician provide a written statement that the physician assistant is qualified to provide the needed medical services and that the medical care will be unavailable at the remote site unless the physician assistant is allowed to practice there.

327.4(2) A supervising physician must visit a remote site to provide additional medical direction, medical services and consultation at least every two weeks or less frequently as specified in special circumstances. When visits are less frequent than every two weeks in unusual or emergency circumstances, the board shall be notified in writing of these circumstances.

ITEM 8. Amend paragraph **327.6(1)"f"** as follows:

f. ~~Any prescription for controlled substances prescribed by the physician assistant shall contain the~~ *The Drug Enforcement Administration (DEA) number of the physician assistant if the prescription is for a controlled substance.*

ITEM 9. Amend subrule 327.6(2) as follows:

327.6(2) Each oral prescription drug order issued by a physician assistant shall include the same information required for a written prescription, except for the written signature and address of the ~~practitioner's~~ *physician assistant.*

ARC 3173B

PUBLIC SAFETY DEPARTMENT[661]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 100.35 and 135C.9, the Department of Public Safety hereby gives Notice of Intended Action to amend Chapter 5, "Fire Marshal," Iowa Administrative Code.

Residential care facilities are health care facilities which provide limited care to their residents and specifically do not provide nursing care other than in emergencies. These facilities are licensed by the Iowa Department of Inspections and Appeals pursuant to Iowa Code section 135C.6. Iowa Code section 135C.9 provides that certification, based upon an inspection, by the Fire Marshal that the facility is in substantial compliance with rules adopted by the Fire Marshal that es-

PUBLIC SAFETY DEPARTMENT[661](cont'd)

establish fire safety requirements for these facilities is a prerequisite to licensure by the Iowa Department of Inspections and Appeals.

Prior to March 11, 2003, rules 661—5.550(100) through 5.552(100) established the fire safety requirements for residential care facilities. When emergency rule making was undertaken in 2003 to update fire safety requirements generally for licensed health care facilities in Iowa, rules 661—5.550(100) through 5.552(100) were mistakenly rescinded and not replaced. Consequently, since March 11, 2003, there have been no Fire Marshal rules in effect establishing fire safety standards for residential care facilities. The rule making proposed here would correct that situation.

Iowa Code section 100.1, subsection 5, requires that rules adopted by the Fire Marshal be in substantial compliance with fire safety standards published by the National Fire Protection Association. Iowa Code section 135C.9, subsection 2, requires that the fire safety standards established for health care facilities be “substantially in keeping with the latest generally recognized safety criteria for the facilities covered, of which the applicable criteria recommended and published from time to time by the national fire protection association shall be prima facie evidence.” The amendment proposed here adopts by reference applicable portions of the latest edition of the Life Safety Code, which is a standard published by the National Fire Protection Association. In addition, residential care facilities which have been in continuous operation since prior to March 11, 2003, and which were approved by the Fire Marshal pursuant to rules 661—5.550(100) through 5.552(100) prior to that date would be allowed to continue to operate in compliance with those rules.

A public hearing on this proposed amendment will be held on March 10, 2004, at 9:30 a.m. in the conference room of the Fire Marshal Division, 401 SW 7th Street, Des Moines, Iowa 50309. Persons may present their views orally or in writing at the public hearing. Persons who wish to make oral presentations at the public hearing should contact the Agency Rules Administrator, Iowa Department of Public Safety, Wallace State Office Building, Des Moines, Iowa 50319, by mail; by telephone at (515)281-5524; or by electronic mail to admrule@dps.state.ia.us, at least one day prior to the public hearing.

Any written comments or information regarding this proposed amendment may be directed to the Agency Rules Administrator by mail or electronic mail at the addresses indicated at least one day prior to the public hearing, or submitted at the public hearing. Persons who wish to convey their views orally other than at the public hearing may contact the Agency Rules Administrator by telephone or in person at the Department office at least one day prior to the public hearing.

It is the expectation of the Department that this amendment will be Adopted and Filed Emergency After Notice, after the public notice and participation provisions of Iowa Code chapter 17A have been met, in order that the amendment may take effect at the earliest possible time, since there are currently no Fire Marshal rules in place for residential care facilities. Emergency rule making without completing the public notice and participation provisions of the Iowa Administrative Procedure Act appears to be precluded by language found in Iowa Code section 100.1, subsection 5, which states that “[Fire Marshal] rules shall be promulgated only after public hearing.”

This amendment is intended to implement Iowa Code sections 100.35 and 135C.9.

The following amendment is proposed.

Amend 661—Chapter 5 by adopting the following **new** rule:

661—5.950(135C) Residential care facilities.

5.950(1) Definitions. The following definitions apply to rule 661—5.950(135C):

“Existing residential care facility” means a residential care facility which has been in continuous operation since before [insert effective date of rule].

“New residential care facility” means a residential care facility which begins operation on or after [insert effective date of rule].

“NFPA” means the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269. References of the form “NFPA xx,” where “xx” is a number, refer to the NFPA standard or pamphlet of the corresponding number.

“Residential care facility” means a facility that is certified or seeking licensure by the department of inspections and appeals as a residential care facility pursuant to the provisions of Iowa Code section 135C.6, or has been identified by the department of inspections and appeals as a facility that requires licensure as a residential care facility pursuant to Iowa Code section 135C.6.

5.950(2) New residential care facilities. NFPA 101, Life Safety Code, 2003 Edition, Chapter 18, “New Health Care Facilities,” is adopted by reference as the rules governing new residential care facilities. For purposes of this subrule, a residential care facility is a “limited care facility” as defined in NFPA 101, Life Safety Code, 2003 edition, Section 3.3.69.2.

5.950(3) Existing residential care facilities. NFPA 101, Life Safety Code, 2003 edition, Chapter 19, “Existing Health Care Facilities,” is adopted by reference as the rules governing existing residential care facilities. For purposes of this subrule, a residential care facility is a “limited care facility” as defined in NFPA 101, Life Safety Code, 2003 edition, Section 3.3.69.2.

EXCEPTION: Existing residential care facilities which were approved by the fire marshal on or before March 11, 2003, pursuant to rules 661—5.550(100) to 5.552(100) and which have been in continuous operation since on or before March 11, 2003, may continue to operate in compliance with rules 661—5.550(100) to 5.552(100) as those rules existed on March 10, 2003. **NOTE:** Rules 661—5.550(100) to 5.552(100) were rescinded effective March 11, 2003.

ARC 3172B

**PUBLIC SAFETY
DEPARTMENT[661]**

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 103A.7, the Building Code Commissioner, with the approval of the Building Code Advisory Council, hereby gives Notice of Intended Action to amend Chapter 16, “State of Iowa Building Code,” Iowa Administrative Code.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

Provisions of the State of Iowa Building Code generally apply to buildings owned by the state of Iowa and to buildings and facilities constructed in local jurisdictions which have adopted the State of Iowa Building Code. Hospitals, nursing homes, and health care facilities licensed by the state of Iowa are required to comply with the applicable provisions of the rules of the State Fire Marshal (661—Chapter 5). The provisions of the rules of the State Fire Marshal which apply to hospitals, nursing homes, and other health care facilities are based upon the Life Safety Code, 2000 edition, which is a standard published by the National Fire Protection Association. Hospitals may alternatively be accredited by the Joint Commission on Accreditation of Healthcare Organizations, which also requires compliance with the same Life Safety Code requirements. Compliance with applicable requirements of the 2000 edition of the Life Safety Code is also required in order for hospitals, nursing homes, and other health care facilities to be eligible for reimbursement from the federal Medicare and Medicaid programs.

The Uniform Building Code, 1994 edition, which is adopted by reference in the State of Iowa Building Code, includes provisions related to fire protection and means of egress, subjects which are also covered by the Life Safety Code. Compliance with the fire protection and means of egress provisions of both codes simultaneously is difficult and, in some cases, may be impossible. Iowa Code section 100.38 provides that, when a building or facility is subject to the State of Iowa Building Code, and when a provision of the State of Iowa Building Code conflicts with a provision of Iowa Code chapter 100 or the rules of the State Fire Marshal, then the building code provision shall apply, and the conflicting provision of the Fire Marshal rules shall not. However, compliance with the provisions of the Fire Marshal rules is a practical necessity for hospitals, nursing homes, and other licensed health care facilities, even if these provisions conflict with provisions of the State of Iowa Building Code, because compliance with the Life Safety Code requirements is a condition of eligibility for reimbursement from the Medicaid and Medicare programs.

The amendment proposed here would relieve hospitals, nursing homes, and other licensed health care facilities which are subject to the State of Iowa Building Code of the necessity of complying with two overlapping and potentially conflicting codes. The amendment provides that these facilities, when subject to the State of Iowa Building Code, would be deemed to be in compliance with the provisions of Chapter 7 (Fire-Resistant Materials and Construction) and Chapter 10 (Means of Egress) and other provisions of the Uniform Building Code, 1994 edition, which are inconsistent with applicable provisions of the Life Safety Code, if they are in compliance with the applicable provisions of the Life Safety Code, 2000 edition.

A public hearing on this proposed amendment will be held on March 10, 2004, at 1:30 p.m. in the conference room at the office of the Fire Marshal Division, 401 SW 7th Street, Des Moines, Iowa 50309. Persons may present their views orally or in writing at the public hearing. Persons who wish to make oral presentations at the public hearing should contact the Agency Rules Administrator, Iowa Department of Public Safety, Wallace State Office Building, Des Moines, Iowa 50319, by mail; by telephone at (515)281-5524; or by electronic mail to admrule@dps.state.ia.us, at least one day prior to the public hearing.

Any written comments or information regarding this proposed amendment may be directed to the Agency Rules Administrator by mail or electronic mail at the addresses indicated at least one day prior to the public hearing, or submitted

at the public hearing. Persons who wish to convey their views orally other than at the public hearing may contact the Agency Rules Administrator by telephone or in person at the Department office at least one day prior to the public hearing.

This amendment was also Adopted and Filed Emergency and is published herein as **ARC 3171B**. This Notice of Intended Action will allow for public comment and participation regarding this amendment.

This amendment is intended to implement Iowa Code section 103A.7.

ARC 3174B**REAL ESTATE COMMISSION[193E]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 543B.9, the Real Estate Commission gives Notice of Intended Action to amend Chapter 3, “Broker License,” and Chapter 16, “Prelicense Education and Continuing Education,” Iowa Administrative Code.

The proposed amendment to Chapter 3 adds new language requiring salespersons to complete the salesperson postlicense courses before they can become brokers. These courses would be in addition to the broker prelicense courses. The proposed amendment to Chapter 16 further clarifies that salespersons wanting to become brokers must complete the salesperson postlicense courses before sitting for the broker licensing examination.

These amendments are subject to waiver or variance pursuant to 193—Chapter 5.

Any interested person may make written or oral suggestions or comments on these proposed amendments on or before March 9, 2004. Comments should be directed to Susan Griffel, Education Director, Real Estate Commission, 1920 SE Hulsizer Road, Ankeny, Iowa 50021; fax (515)281-7411; E-mail susan.griffel@iowa.gov.

These amendments are intended to implement Iowa Code chapters 272C and 543B.

The following amendments are proposed.

ITEM 1. Amend subrule 3.1(5) as follows:

3.1(5) As required by Iowa Code section 543B.15(8) and 193E—subrule 16.3(1), an applicant for licensure as a real estate broker shall complete at least 72 classroom hours of commission-approved real estate education within 24 months prior to taking the broker examination. This education shall be in addition to the required salesperson prelicense course. *Effective January 1, 2005, and thereafter, all persons applying for a broker license within their first renewal term must complete the 36-hour salesperson postlicense courses, including 12 hours of Developing Professionalism and Ethical Practices, 12 hours of Buying Practices and 12 hours of Listing Practices, before a broker license can be issued.*

ITEM 2. Amend subrule 16.3(2) as follows:

16.3(2) Completion of prelicense education. Successful completion of the broker prelicense education includes passage of an examination(s) designed by the approved provider

REAL ESTATE COMMISSION[193E](cont'd)

that is sufficiently comprehensive to measure the student's knowledge of all aspects of the course(s). Times allotted for examinations may be regarded as hours of instruction. *Effective January 1, 2005, and thereafter, all persons applying for a broker license within their first renewal term must complete the 36-hour salesperson postlicense courses, including 12 hours of Developing Professionalism and Ethical Practices, 12 hours of Buying Practices and 12 hours of Listing Practices, before a broker license can be issued.*

ARC 3184B**REVENUE DEPARTMENT[701]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 17A.22 and 421.17(19), the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 5, “Public Records and Fair Information Practices,” Chapter 6, “Organization, Public Inspection,” Chapter 8, “Forms and Communications,” Chapter 17, “Exempt Sales,” Chapter 26, “Sales and Use Tax on Services,” Chapter 34, “Vehicles Subject to Registration,” and Chapter 86, “Inheritance Tax,” Iowa Administrative Code.

Items 1 through 5 amend subrules 5.13(2), 5.14(6), 6.1(1), 6.1(3) and 8.2(2) and rescind subrule 8.4(2) to implement 2003 Iowa Acts, Senate File 453, sections 63 through 121, and 2003 Iowa Acts, Senate File 458, section 142, which provide that effective July 1, 2003, the Iowa Lottery ceased to be a division of the Department of Revenue and became an independent authority as a charter agency. These changes also reflect that the State Financial Management Division was moved to the Department of Administrative Services. These changes also update various provisions related to the Department.

Item 6 amends subrule 17.9(1) to implement 2003 Iowa Acts, House File 624, sections 1 and 4, which amends the term “livestock” and adds a definition of “farm deer” for the purpose of exemption from Iowa sales and use tax to include whitetail deer and mule deer, but not free-ranging whitetail deer and mule deer.

Item 7 amends subrule 26.8(4) to implement 2003 Iowa Acts, Senate File 458, section 126, to provide that fees charged by a financial institution to a noncustomer for transactions involving point of sales, service charge or access to an automated teller machine are not subject to Iowa sales or use tax.

Item 8 amends subrule 34.5(9) to implement 2003 Iowa Acts, Senate File 458, section 127, to provide that the transfer of a vehicle subject to registration from one corporation to another corporation can be exempt from Iowa use tax if certain criteria are met.

Item 9 amends rule 701—86.1(450) to implement 2003 Iowa Acts, Senate File 366, sections 1 and 2, by amending the definition of what constitutes the taxable estate and adding a definition of “stepchild.”

Item 10 amends paragraph 86.2(2)“d” to implement 2003 Iowa Acts, Senate File 366, section 1, to provide a reference for a new definition of “stepchild.”

Item 11 amends paragraph 86.5(7)“d” to implement 2003 Iowa Acts, Senate File 366, section 3, to change the date on which property of an estate is valued. Previously, property of an estate was valued at the date of death of the decedent. With this amendment, for estates with decedents dying on or after July 1, 2003, the transferred property of items that must be included in an estate will be valued on the date of transfer.

The proposed amendments will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

Any person who believes that the application of the discretionary provisions of these amendments would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

The Department has determined that these proposed amendments may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than March 22, 2004, to the Policy Section, Compliance Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on these proposed amendments on or before March 9, 2004. Such written comments should be directed to the Policy Section, Compliance Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

Persons who want to convey their views orally should contact the Policy Section, Compliance Division, Department of Revenue, at (515)281-8036 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by March 12, 2004.

These amendments are intended to implement Iowa Code sections 421.17, 422.42, 422.45(5), 422.72, 423.4(4), 423.4(9) and 423.4(16); Iowa Code Supplement sections 10.1(14), 170.1, 422.45(65), 423.4(10) and 450.1 to 450.3; Iowa Code chapters 450A, 450B and 451; and 2003 Iowa Acts, chapter 178, sections 66 through 121.

The following amendments are proposed.

ITEM 1. Amend rule 701—5.13(17A,22) as follows:

Amend paragraph **5.13(2)“bb”** as follows:

bb. Centralized payroll and department personnel and payroll systems, ~~including those of the Iowa Lottery~~, to the extent covered (Iowa Code subsection 22.7(11)).

Amend the implementation clause as follows:

This rule is intended to implement Iowa Code chapters sections 421.17 and 422.72 and chapters 450, 450A, 450B, and 451 and 2003 Iowa Acts, chapter 178, sections 66 through 121.

ITEM 2. Amend subrule **5.14(6)** by rescinding paragraph “ii” and relettering paragraphs “jj” to “mm” as “ii” to “ql.”

ITEM 3. Amend rule 701—6.1(17A) as follows:

Amend subrule 6.1(1) as follows:

REVENUE DEPARTMENT[701](cont'd)

6.1(1) Establishment of the department of revenue and finance. By an Act of the general assembly (chapter 1245, Acts of the 71st GA), a department of revenue and finance was created in lieu of three separate state agencies. The department is administered by the director with a three-member state board of tax review and a five-member lottery board established within the department for administrative and budgetary purposes. As to the organization and functions of the state board of tax review, see rules contained in 701—Chapters 1 to 5. As to the organization and functions of the lottery board, see rules contained in 705—Chapters 1 to 10.

Effective July 1, 2003, the Iowa department of revenue and finance is titled the Iowa department of revenue.

The department of revenue and finance in recognizing its responsibilities has adopted the following creed to guide and lend direction to its endeavors:

“The Department of Revenue and Finance is dedicated to serving the citizens of Iowa and other public officials, while performing the following missions *mission*:

“• Collect all taxes due, which any person may be required by law to pay, but no more.;

“• Conduct the Iowa lottery in an effort to maximize the amount of revenues for the state in a manner that maintains the dignity of the state and the general welfare of its people;

“• Manage the state’s financial resources by utilizing generally accepted accounting principles and procedures, by operating cost-effective accounting and payroll systems, by processing claims timely and accurately, and by preparing and issuing financial statements.

“In carrying out these missions *this mission*, the department resolves to provide the best service possible in a cordial and helpful manner and to provide maximum opportunity and incentive for the professional growth and development of all our employees.”

The office of the department is maintained at the seat of government in the Hoover State Office Building, 1305 East Walnut Street, P.O. Box 10460, Des Moines, Iowa 50306. The lottery division maintains an office at 2015 Grand Avenue, Des Moines, Iowa 50312.

The department maintains field offices in six regions of the state and in seven cities outside the state.

Amend subrule 6.1(3) as follows:

6.1(3) Methods by which and location where the public may obtain information or make submissions or requests. The department of revenue and finance maintains its principal office in the Hoover State Office Building, 1305 East Walnut Street, P.O. Box 10460, Des Moines, Iowa 50306, and maintains regional offices located in Sioux City, Waterloo, Council Bluffs, Des Moines, Cedar Rapids, and Davenport. This affords members of the public two possible alternatives for obtaining information or making submissions or requests depending upon the person’s particular location and the type of information needed.

a. No change.

b. Regional offices. The regional offices provide an excellent means of aiding taxpayers. Members of the public desiring forms, aid, assistance or other information are encouraged to contact the regional office located in their particular area. However, regional *Regional* offices do not have facilities for making available all matters available for public inspection under 6.2(17A). The regional offices and auditors do have copies of all rules and will make them available to the public. Members of the public needing forms or needing assistance in filling out forms are encouraged to contact the regional offices *principal office*.

DEPARTMENT OF REVENUE AND FINANCE

The department consists of three entities, which are the department of revenue and finance, which includes the compliance, internal resource management, and state financial management divisions; the office of the director; the following divisions: compliance, property tax, revenue operations, internal services, and technology and information management; and the state board of tax review; and the lottery division and commission.

THE OFFICE OF THE DIRECTOR

The office of the director consists of the director and the following areas within this division *office*: property tax, strategic planning, internal audit, clerk of the hearing section, and public/private partnership and research and fiscal analysis.

Essential Functions of the Director’s Office:

1. The director’s office provides overall management of the agency and reviews protest and revocation cases on appeal.

2. The property tax section provides technical assistance and training to local assessing jurisdictions, ensures equal assessment of property, and is responsible for determining valuation for railroads, electric, water, and pipeline companies.

3 2. The strategic planning section *function* plans and coordinates the future operations and goals of the department.

4 3. Provides *The director’s office provides* financial checks and balances within the department.

5 4. The clerk of the hearing section receives all protests, tracks protests and coordinates protest processing.

6 5. Public/private partnership provides for a working relationship between the public and private sector.

6. The director’s office provides research and data information.

7. The director’s office provides fiscal analysis and reporting, which includes fact-finding, defining issues, issue resolution, and projection of revenues, and evaluates the fiscal impact of tax legislation and policies on state budget.

PROPERTY TAX DIVISION

The property tax division provides technical assistance and training to local assessing jurisdictions, ensures equal assessment of property, and is responsible for determining valuation for railroads, electric, water, and pipeline companies.

COMPLIANCE DIVISION

The compliance division is led by two coadministrators. These administrators supervise the daily operations of *includes* the examination section, audit services, taxpayer services, policy section, investigative audit section, in-state field offices and out-of-state field offices.

Essential Functions of the Compliance Division:

1. to 7. No change.

INTERNAL SERVICES DIVISION

Essential Functions of the Internal Services Division:

1. Central accounting, which includes operating budget development, maintenance and reporting; and

2. Employee resource team, which governs personnel activities, payroll, benefits, quality of the environment and customer service.

INTERNAL RESOURCE MANAGEMENT

TECHNOLOGY AND INFORMATION MANAGEMENT DIVISION

This division consists of information resources management and employee and financial resources. These sections

REVENUE DEPARTMENT[701](cont'd)

include administrative services, application design and development, program management, program evaluation, operations, employee resource team, finance, form forms management, fiscal analysis, reporting, and technical planning and support.

Essential Functions of the Internal Resource Management Division *Technology and Information Management Division:*

1. ~~Central accounting, which includes operating budget development, maintenance and reporting;~~

2 1. Application development, which includes system analysis, programming, database administration and support;

3. ~~Fiscal analysis and reporting, which includes fact-finding, defining issues, issue resolution, and projection of revenues, and which evaluates fiscal impact of tax legislation and policies on state budget;~~

4 2. Forms management, which includes review and performing the function of compliance with federal and state law and managing electronic filing programs; and

5 3. Technical planning and support, which includes technical support to the agency on software and hardware issues, and which assists in application and development regarding technology-related issues; and .

6. ~~Employee resource team, which governs personnel activities, payroll, benefits, quality of the environment and customer service.~~

STATE FINANCIAL MANAGEMENT

REVENUE OPERATIONS DIVISION

This division is led by two financial management coadministrators and includes collections (accounts receivable, central collections, field office advanced collections), customer accounts, document processing, and data operations and information technology, and accounting bureau, which includes financial reporting and processing and financial systems.

Essential Function *Functions of State Financial Management the Revenue Operations Division:*

1. Collections, which includes accounts receivable, central collections, advanced collection field offices and customer accounts;

2. Document processing, which includes preparing tax information for processing, deposits and records; and

3. Data entry, which includes entry of all tax forms, files, and databases, and which edits taxpayer documents and mailing information.;

4. ~~Financial reporting and processing which includes general accepted accounting principles (GAAP) reporting, reporting on the financial condition of the state, daily processing and the income offset program; and~~

5. ~~Financial systems, which includes maintaining all state accounting programs and systems which includes, but is not limited to, collections, offset, taxes and payroll.~~

Amend the implementation clause as follows:

This rule is intended to implement Iowa Code sections 421.1, 421.2, 421.9, 421.14, 421.17, and 422.1 and 422.72 and 2003 Iowa Acts, chapter 178, sections 66 through 121.

ITEM 4. Amend subrule 8.2(2) as follows:

8.2(2) Mailing addresses. The following post office box numbers should be used when corresponding with the department. All addresses are completed: Des Moines, Iowa 50306.

Box Number	Addressee
10411	Withholding—Other than High Dollar
10412	Sales Tax Returns—Other than High Dollar
10413	Processing Bureau Revenue Operations Real Estate Transfer Accounts and Finance Gasohol Inventory Receiving Unit Records Electronic Funds Transfer Registration Treasurers' Monthly Use Tax Franchise Estimates Cigarette Tax Returns Inventories
10455	Insurance
10456	Audit Division Compliance Division Individual Section Business Section Examination Section Investigative Audit Audit Services Motor Fuel Refund Cigarette Tax and Tobacco Tax Returns and General Mail
10457	Technical Services Appeals Policy Taxpayer Services
10458	Field Services
10459	Property Tax Credit Rent Reimbursement
10460	Department of Revenue and Finance Administration Information and Management Services Local Government Services Clerk of the Hearing Section
10462	Sales Tax Return—High Dollar
10463	Withholding—High Dollar
10464	Collections
10465	Motor Fuel Refund
10466	Individual Estimates
10467	Fiduciary and Inheritance
10468	Corporation Tax Corporation Returns Corporation Estimates
10469	Consumer Use Tax
10470	Retailers' Use Tax

REVENUE DEPARTMENT[701](cont'd)

- 10471 Accounts Receivable
 Pre-edit
 Collections
- 10472 Priority Handling
 Hearing Officer
 Cigarette Stamp Orders

ITEM 5. Rescind and reserve subrule **8.4(2)**.

ITEM 6. Amend rule 701—17.9(422,423) as follows:

Amend subrule **17.9(1)**, introductory paragraph, by adding the following **new** sentence at the end thereof:

Effective May 23, 2003, the definition of “livestock” includes whitetail deer and mule deer, but not free-ranging whitetail deer and mule deer.

Amend the implementation clause as follows:

This rule is intended to implement Iowa Code sections 422.42 as amended by 2002 Iowa Acts, Senate File 335, 422.43, and 423.1 and 2003 Iowa Acts, chapter 149, sections 1 and 4.

ITEM 7. Amend rule 701—26.8(422) as follows:

Amend subrule **26.8(4)** by adding **new** paragraph “**p**” as follows:

p. Effective May 30, 2003, fees charged by financial institutions defined in Iowa Code section 527.2 to a noncustomer that are imposed for point of sale, service charge, or access to an automated teller machine.

Adopt the following **new** implementation clause:

This rule is intended to implement Iowa Code section 422.43 and section 422.45 as amended by 2003 Iowa Acts, chapter 179, section 126.

ITEM 8. Amend rule 701—34.5(423) as follows:

Amend subrule 34.5(9) as follows:

34.5(9) Vehicles which are transferred from a business which was a sole proprietorship or partnership to a corporation for the purpose of continuing the business if all of the stock of the corporation is owned by the sole proprietor and the sole proprietor’s spouse or by all the partners if the business was a partnership are exempt from tax. This exemption is also applicable if vehicles are transferred from a corporation to a sole proprietorship or partnership formed for the purpose of continuing the business when carried on by the same person or persons who were stockholders of the corporation.

a. This exemption contains the following provisions:

a. (1) If the business transferring the vehicle is a sole proprietorship or partnership, the vehicle must be transferred to a new corporation. For the purposes of this subrule, a corporation is a “new” corporation if, at the time of transfer, the corporation has been incorporated for one calendar year or less.

b. (2) The new corporation must have been formed for the purpose of continuing the business of the sole proprietorship or partnership. The activities of the new corporation must, therefore, be the same as the sole proprietorship or the partnership.

c. (3) The new corporation must be owned 100 percent by the sole proprietor, the sole proprietor’s spouse or all the partners, in the case of a partnership, which is transferring the vehicle.

d. (4) The exemption is equally available when vehicles are transferred from a corporation to a sole proprietorship or to a partnership.

e. (5) In such cases, the newly formed sole proprietorship or partnership must have been formed to continue the busi-

ness of the corporation. Therefore, the activities of the new entity must be the same as the corporation.

f. (6) The new sole proprietorship or partnership must have owned all the stock in the transferring corporation when the corporation existed.

b. Effective July 1, 2001, this exemption is also applicable to transfers to and from limited liability companies. The rules regarding transfers to a “new” corporation are also applicable to a transfer to a limited liability company. In addition, for a limited liability company to claim the exemption, the creation of the limited liability company must be by the same person or persons who owned the transferor entity.

c. *Effective May 30, 2003, the gross receipts from the transfer of a vehicle subject to registration from one corporation to another corporation are exempt if the following two criteria are met:*

(1) *The corporations involved in the transfer must be primarily engaged in the business of leasing vehicles subject to registration; and*

(2) *The corporations are part of the same controlled group for federal income tax purposes.*

Amend the implementation clause as follows:

This rule is intended to implement Iowa Code sections 422.45(5), 423.4(4), 423.4(9) as amended by 2001 Iowa Acts, House File 736, section 7, and 423.4(16) and 2003 Iowa Acts, chapter 179, section 127.

ITEM 9. Amend rule **701—86.1(450)** as follows:

Amend the definition of “gross estate” by adding the following **new** unnumbered paragraph at the end thereof:

Effective for estates of a decedent dying on or after July 1, 2003, property and any interest in or income from any of the estates and property, which pass from the decedent owner in any manner, are subject to tax if the passing interest is in one of the following: (1) real estate and tangible personal property located in Iowa regardless of whether the decedent was a resident of Iowa at death; and (2) intangible personal property owned by a decedent domiciled in Iowa.

Add the following **new** definition in alphabetical order:

“Stepchild” means the child of a person who was married to the decedent at the time of the decedent’s death, or the child of a person to whom the decedent was married, which person died during the marriage of the decedent.

Amend the implementation clause as follows:

This rule is intended to implement Iowa Code chapter 22 and Iowa Code sections 421.2, 450.1 and 450.2 as amended by 2003 Iowa Acts, chapter 95, sections 1 and 2, 450.67, 450.68, 450.94, 450.97 and 450B.7.

ITEM 10. Amend paragraph **86.2(2)“d,”** first unnumbered paragraph, as follows:

The exemption granted to stepchildren is limited to that class of step relationships exclusively. The exemption is not extended to include any lineal ascendants or descendants of the step relationship, such as stepparent or stepgrandparent. *For a definition of “stepchild” for estates of decedents dying on or after July 1, 2003, please see the definition found in 701—86.1(450).*

ITEM 11. Amend rule 701—86.5(450) as follows:

Amend paragraph **86.5(7)“d,”** introductory paragraph, as follows:

d. Gifts made within three years prior to death—for estates of decedents dying on or after July 1, 1984. All gifts made by the donor within three years prior to death, which are in excess of the annual calendar year federal gift tax exclusion provided for in 26 U.S.C. Section 2503, subsections b and e, are included in the gross estate for inheritance tax

REVENUE DEPARTMENT[701](cont'd)

purposes. The motive, intention or state of mind of the donor is not relevant. Date of valuation for a gift in which there was a full transfer of ownership is valued at the date in which the gift is completed. However, for a gift of an interest in property that is less than a full transfer of ownership, which includes, but is not limited to, a life estate or conditional gift, the date of valuation is the date of the death of the decedent, unless alternative valuation is chosen. *Effective for estates of decedents dying on or after July 1, 2003, valuation of property transferred by the grantor or donor is based on the net market value at the date of transfer.* The fact alone that the transfer is a gift, in whole or in part, and exceeds the annual calendar year exclusion for federal gift tax purposes, is sufficient to subject the excess of the transfer over the exclusion to tax. The exclusion is applied to the total amount of the gifts made to a donee in a calendar year, allocating the exclusion to the gifts in the order made during the calendar year. This rule has important application to the earliest year of the three-year period before death because the three-year period for inheritance tax ~~purpose~~ *purposes* is measured from the date the decedent-donor died. This will only rarely coincide with a calendar year. As a result, none of the gifts made in the earliest calendar year of the three-year period prior to death, regardless of the amount, which are made before the beginning of the three-year period, measured by the decedent's death date, are subject to tax. However, gifts made before the three-year period begins in this earliest year will reduce or may completely absorb the exclusion amount that is available for the remaining part of this first-year period. The significance of the difference between the three-year period prior to death and the calendar year exclusion amount is illustrated by the following:

Amend the implementation clause as follows:

This rule is intended to implement Iowa Code sections 422.7(4), 450.2, 450.3 *as amended by 2003 Iowa Acts, chapter 95, section 3*, 450.4(5) ~~as amended by 2001 Iowa Acts, House File 736, section 20~~, 450.8, 450.12, 450.37, 450.91, 633.699, and 633.703A.

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REVENUE DEPARTMENT[701]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code chapter 17A and section 421.17(19), the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 108, "Local Option School Infrastructure Sales and Service Tax," and to adopt new Chapter 109, "New School Infrastructure Local Option Sales and Services Tax—Effective On or After April 1, 2003, Through Fiscal Years Ending December 31, 2022," Iowa Administrative Code.

Item 1 amends 701—Chapter 108 by indicating in the title that the chapter governs school infrastructure local option sales and service taxes that had been voted on and approved prior to April 1, 2003.

Item 2 adopts 701—Chapter 109 to implement Iowa Code Supplement section 422E.3A [2003 Iowa Acts, Senate File 445, and House File 683, sections 20 to 25] to provide a new

distribution of school local option sales and services tax for jurisdictions that vote on and approve the tax on or after April 1, 2003. This tax is set to automatically repeal on December 31, 2022.

The proposed amendments will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

Any person who believes that the application of the discretionary provisions of these amendments would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

The Department has determined that these proposed amendments may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than March 22, 2004, to the Policy Section, Compliance Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on these proposed amendments on or before March 9, 2004. Such written comments should be directed to the Policy Section, Compliance Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

Persons who want to convey their views orally should contact the Policy Section, Compliance Division, Department of Revenue, at (515)281-8036 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by March 12, 2004.

These amendments are intended to implement Iowa Code Supplement sections 422E.1 to 422E.3, 422.3A, 422E.4 and 422E.6.

The following amendments are proposed.

ITEM 1. Amend **701—Chapter 108** by adding the following **new** statement before rule 701—108.1(422E):

These rules govern school infrastructure local option sales and services taxes voted on and approved prior to April 1, 2003. For school infrastructure local option sales and services taxes voted on and approved on and after April 1, 2003, see 701—Chapter 109.

ITEM 2. Adopt the following **new** chapter:

CHAPTER 109

**NEW SCHOOL INFRASTRUCTURE LOCAL OPTION
SALES AND SERVICES TAX—EFFECTIVE ON OR
AFTER APRIL 1, 2003, THROUGH FISCAL YEARS
ENDING DECEMBER 31, 2022**

These rules govern school infrastructure local option sales and services taxes that are voted on and approved on and after April 1, 2003. Taxes imposed on and after April 1, 2003, automatically expire after ten years of imposition or less if stated in the ballot proposition. Regardless of when the school infrastructure local option sales and services tax was approved, the term, or the date of repeal in a ballot proposition, all school infrastructure local option sales and services taxes will automatically repeal on December 31, 2022.

REVENUE DEPARTMENT[701](cont'd)

Payments of the tax revenue under this chapter are based on estimates and projections. Accordingly, if an overpayment of tax to a school district occurs, subsequent payments to that school district will be adjusted to recoup the overpayment.

701—109.1(422E) Use of revenues and definitions.

109.1(1) Use of revenues. Revenues from this tax may be used for the following:

a. “School infrastructure needs,” which are activities that a school district has authorized by contract of indebtedness and the issuance of general obligation bonds under Iowa Code section 296.1 and payment or retirement of outstanding bonds previously issued for school infrastructure as defined in this chapter. “School infrastructure needs” does not include activities related to a school teacher’s or school superintendent’s home or homes. Allowed “activities” consist of the following: construction; reconstruction; repair; demolition work; purchases for construction or remodeling of schoolhouses, stadiums, gyms, fieldhouses, and bus garages. Allowed “activities” include all activities in which revenues are allowed to be expended under Iowa Code Supplement section 298.3, which include: purchase and improvement of grounds; construction of schoolhouses or building and opening roads to these facilities; purchase of buildings; purchase, lease or lease-purchase of equipment or technology exceeding \$500 value per unit; payment of debts contracted for the erection of schoolhouses or buildings; procuring or acquisition of library facilities; repairing, remodeling, reconstructing, improving, or expanding the schoolhouses or buildings, and any additions to existing schoolhouses; expenditures for energy conservation; rental of facilities under Iowa Code chapter 28E; purchase of transportation equipment for transporting students; lease-purchase agreements for school buildings and equipment exceeding \$5,000 per single unit; equipment purchases for recreational purposes; payments to municipalities or other entities as required in Iowa Code section 403.19(2); and activities set forth under the educational and recreational tax as provided in Iowa Code section 300.2.

b. Property tax relief. Revenues from this school infrastructure local option sales and services tax may be used to provide property tax relief.

109.1(2) Definitions. The following definitions shall be used in interpreting the rules of this chapter:

“Department” means the Iowa department of revenue.

“Director” means the director of the Iowa department of revenue.

“Guaranteed school infrastructure amount” or “guaranteed amount or payment” means an amount of revenues from the school infrastructure local option sales and services tax to be received by a school district based on the statewide tax revenues per student, multiplied by the quotient of the tax rate percentage imposed in the county, divided by 1 percent and multiplied by the quotient of the number of quarters the tax is imposed during the fiscal year, divided by four quarters.

“Sales tax capacity per student” means the estimated amount of revenues that a school district receives or would receive if a school infrastructure local option sales and services tax is imposed at 1 percent in the county pursuant to Iowa Code Supplement section 422E.2, divided by the school district’s actual enrollment. Actual enrollment for a school district is obtained from the department of education as provided in 109.4(1).

“Statewide tax revenues per student” currently means \$575 per student. The general assembly shall review this amount annually to determine its appropriateness.

“Supplemental school infrastructure amount” or “supplemental amount” or “supplemental payment” means the guaranteed school infrastructure amount for the school district less its pro-rata share of the school infrastructure local option sales and services tax as provided in 109.4(1).

701—109.2(422E) Imposition of tax. For a school infrastructure local option sales and services tax to be valid, it must be imposed in accordance with the following:

109.2(1) Petition for the tax. A petition requesting imposition of the tax must be submitted to the board of supervisors or by motion of a school district or school districts.

109.2(2) Ballot. A ballot proposition must be substantially similar to the petition by the board of supervisors or motions of the school district(s). The ballot must include the rate of tax, imposition and repeal date, and the specific purpose or purposes for which the revenues will be expended. The form of the ballot is governed by the state commissioner of elections.

109.2(3) Publication. The ballot for the imposition of the tax must be published to notify voters of the desire for the tax and the particulars concerning the tax. The notice consisting of the ballot for the tax must be published at least 60 days prior to the election on imposition of the tax.

109.2(4) Rate of tax. The rate of tax must not be more than 1 percent.

109.2(5) Proposition of the tax. Only a county commissioner of elections shall submit the question of imposition of the tax to the voters.

109.2(6) Election. The election regarding imposition of the tax must be held at least 60 days after publication of the notice of the ballot for this tax. The election must be held at the state general election or a special election. An election regarding imposition of the tax shall not be held at a city regular election.

a. Election necessary. Elections are necessary to impose, repeal, or change the rate of the tax, or to change the use in revenues from the tax. Elections for repeal, change in rate, or change in use must be held in the same manner as the election for imposition. If an election is held for change in use of the revenues from the tax, the election must be held only in the school district where the change in use is proposed to occur.

b. Effective dates. The following dates govern the imposition and repeal of the tax:

(1) Effective dates must be no sooner than 90 days following the favorable election to approve the tax. The tax may only be imposed with an effective date of January 1 or July 1.

(2) Repeal dates must be no sooner than 90 days following a favorable election to repeal the tax. Repeal must occur on either June 30 or December 31. All school infrastructure local option sales and services tax under this chapter is repealed effective December 31, 2022, regardless of the repeal date in the ballot of the tax. The tax cannot be extended beyond December 31, 2022.

The tax shall not be repealed nor the rate of tax reduced if obligations are outstanding which are payable as provided in Iowa Code Supplement section 422E.4. However, this provision does not apply to the repeal of the tax on December 31, 2022.

c. Notice of election result. Within 10 days after the election at which there was a vote favoring imposition, repeal or change in rate, the county auditor must send a written notice of the election results to the director. The notice must be a copy of the abstract of votes from the favorable election.

REVENUE DEPARTMENT[701](cont'd)

d. Election costs. Cost of an election shall be apportioned among the school districts within the county on a pro-rata basis in proportion to the number of registered voters in each school district who reside within the county and the total number of registered voters within the county.

109.2(7) Revenue purpose statement. No later than 60 days prior to the election, each school district located in the county may submit a revenue purpose statement to the county commissioner. The revenue purpose statement states the specific purpose or purposes for which the tax or supplemental amount will be expended. Such purposes are limited to those set forth in 701—109.1(422E). A copy of the revenue purpose statement must be made available for public inspection, posted at the appropriate polling places of each school district during polling hours, and published in a newspaper of general circulation in the school district no sooner than 20 days and no later than 10 days prior to the election on imposition of the tax.

109.2(8) Lack of a revenue purpose statement or remaining revenues. If a revenue purpose statement is not filed 60 days prior to the election or if revenues remain after fulfilling the purpose specified in the revenue purpose statement, the revenues must be used to reduce the following levies in the following order:

a. Bond levies under Iowa Code sections 298.18 and 298.18A and all other debt levies, until the moneys received or the levies are reduced to zero;

b. The regular physical plant and equipment levy under Iowa Code section 298.2 until the moneys received or the levy is reduced to zero;

c. The voter-approved physical plant and equipment levy and income surtax, if any, under Iowa Code section 298.2, until the moneys received or the levy and income surtax, if any, are reduced to zero;

d. The public educational and recreational levy under Iowa Code section 300.2, until the moneys received or the levy is reduced to zero;

e. The schoolhouse tax levy under Iowa Code section 278.1, subsection 7 (Code 1989), until the moneys received or the levy is reduced to zero.

f. Any money remaining after the reduction of the above levies may be used for any authorized infrastructure purpose of a school district.

701—109.3(422E) Application of law. All provisions found in 701—Chapter 108, which governs the collection of regular local option school infrastructure sales and services tax, are applicable to this chapter unless specific changes are set forth in this chapter. Consequently, the collection of tax by retailers and the transactions exempt from this tax are the same as in 701—Chapter 108.

701—109.4(422E) Collection of tax and distribution. When the director receives school infrastructure local option sales and services taxes from retailers, the director shall credit tax receipts, interest, and penalty to the school district's corresponding account within the secure an advanced vision for education (SAVE) fund as provided in Iowa Code Supplement section 422E.3A. Credits shall be made to accounts within SAVE that are maintained in the name of the school districts within the county. If the director cannot determine from which county receipts were collected, then the receipts must be allocated among the possible counties based on the department's allocation rules set forth below.

109.4(1) Pro-rata share based on enrollment. By June 1 preceding each fiscal year the director must compute the guaranteed school infrastructure amount for each school dis-

trict, each school district's sales tax capacity per student, and the supplemental school infrastructure amount for the coming fiscal year. Each school district that has approved imposition of the tax under this chapter shall receive a guaranteed distribution amount of the tax revenues. Revenues from this tax will be allocated to each school district's respective account by the department. If a county has more than one school district or a portion of a school district, tax revenues must be remitted to each school district or portion of a school district in which the tax is imposed on a pro-rata basis. The allocation on the pro-rata basis will be based upon the ratio of the actual enrollment for the school district that attends school in the county to the total combined actual enrollments for all of the school districts that attend school in the county. The formula to compute this ratio is the following:

Actual enrollment for the school district

Total combined actual enrollments of all school districts in county

Combined actual enrollment for a county is based on actual enrollment figures reported by October 1 by the department of education to the department of management. The actual enrollment figures are forwarded by March 1 annually to the department of revenue so the department can compute estimate payments for the following fiscal year.

School districts that voted on and approved a school infrastructure local option sales and services tax prior to April 1, 2003, but seek to not have distribution under this new computation formula shall not be included in the computations of estimates for the county or counties in which the school district is located.

If a school district is located in more than one county, the amount to be distributed to that school district will be computed separately for each county based on the school district's actual enrollment in each county.

109.4(2) Jurisdictions with tax approved prior to April 1, 2003. Jurisdictions that approved implementation of this tax prior to April 1, 2003, shall receive revenues based on the following formulas:

a. Prior to April 1, 2003, approval and above per student capacity. A school district that approved the school infrastructure local option sales and services tax prior to April 1, 2003, and has a sales tax capacity per student above the guaranteed school infrastructure amount set forth in 109.1(422E) will receive an amount equal to its pro-rata share as computed in 109.4(1). A school district may elect to change the amount it receives and receive its distribution based on 109.4(1) for all subsequent years for the duration of the term of the tax for that jurisdiction. To receive this distribution, a school district must have passed a resolution by October 1, 2003, to agree to receive distribution of the revenues from the tax based on the full amount to be received under 701—Chapter 108.

b. Prior to April 1, 2003, approval and below per student capacity. A school district that approved the school infrastructure local option sales and services tax prior to April 1, 2003, and has a sales tax capacity per student below the guaranteed school infrastructure amount will receive an amount equal to its pro-rata share as computed in 109.4(1) and receive a supplemental amount as defined in 109.1(422E) for the remainder of the term of the tax in that jurisdiction. A school district may opt out of receiving this supplemental amount and choose to receive its distribution based on 109.4(1) for all subsequent years for the duration of the term of the tax for that jurisdiction. To opt out, a school district must have passed a resolution by October 1, 2003, to agree to receive distribution of the revenues from the tax based on the full amount to be received under 701—Chapter 108.

REVENUE DEPARTMENT[701](cont'd)

109.4(3) Jurisdictions with tax voted on and approved on or after April 1, 2003. Jurisdictions that have approved implementation of this tax on or after April 1, 2003, will receive revenues based on the following formulas:

a. A school district that has voted on and approved this tax on or after April 1, 2003, will receive an amount equal to its pro-rata share as computed in 109.4(1), not to exceed its guaranteed amount revenues. If a school district's pro-rata share does not meet the guaranteed amount of revenues then the district must receive a supplemental amount.

b. A school district that approves the continuation of the tax on or after April 1, 2003, will receive an amount equal to its pro-rata share as computed in 109.4(1), not to exceed its guaranteed amount. However, if the school district's pro-rata share is less than its guaranteed amount, the school district will receive a supplemental amount.

It must be noted that payment to a school district shall not exceed the guaranteed school district amount. A school district that qualifies for a supplemental payment shall not receive more than the guaranteed amount in any subsequent year.

701—109.5(422E) Insufficient funds. There may arise a deficiency in the SAVE fund to pay the supplemental payments in full. In this situation, the amount available in the SAVE fund must first be used to increase the amount to the school district with the lowest sales tax capacity per student to an amount equal to the amount for the school district or school districts with the next lowest sales tax capacity per student, and then increase the amount to school districts to an amount equal to the amount for the school district or school districts with the next lowest sales tax capacity per student and continue on in this manner until money is no longer available or all school districts reach their guaranteed school infrastructure amount.

701—109.6(422E) Use of revenues by the school district. Nothing in these rules prevents a school district from using its sales tax capacity per student or its guaranteed amount to pay principal and interest on obligations issued pursuant to Iowa Code Supplement section 422E.4.

109.6(1) Districts with below guaranteed amount. School districts with a sales tax capacity per student below its guaranteed amount must use the amount equal to its supplemental amount to pay principal and interest on outstanding bonds previously issued for school infrastructure needs as set forth in Iowa Code Supplement section 422E.1(3). Any money remaining after the payment of these obligations may be used for authorized infrastructure purposes of the school district. After July 1, 2003, an election may be held for voters in the school district to approve a revenue purpose statement which includes items for which the additional revenues may be expended after payment of the district's bond obligations.

109.6(2) Spending limitation on small enrollment—certificate of need. A school district shall not expend the supplemental amount received for new construction or for payments for bonds issued for new construction. In order to expend supplemental money for new construction or bonds for new construction, the school district must, prior to expenditure, apply to the department of education for a certificate of need.

To determine whether a certificate of need should be issued or denied, see Iowa Code Supplement section 422E.3A(6) or the rules of the department of education for factors that will be considered.

A certificate of need for the above-defined school districts is not required in order to pay the following:

a. Outstanding bonds issued for new construction pursuant to Iowa Code section 296.1, prior to April 1, 2003.

b. To repair schoolhouses or buildings, equipment, technology, or transportation equipment for transporting students as set forth in Iowa Code Supplement section 298.3; or

c. Construction necessary to comply with the Americans with Disabilities Act pursuant to 42 U.S.C. Sections 12101-12117.

701—109.7(422E) Bonds. Negotiable, interest-bearing school bonds may be issued by the school district's board of directors without an election. Revenues from tax imposed under this chapter must be used to repay principal and interest of these bonds. Proceeds from these bonds must be used only for school infrastructure needs as defined in this chapter. These bonds may only be issued by a school district that has imposed tax under this chapter. The maximum period for principal on bonds to be payable cannot exceed the date of repeal stated in the ballot proposition.

701—109.8(422E) 28E agreements. A school district which has imposed the tax under this chapter has the authority to enter into an agreement authorized and defined in Iowa Code chapter 28E with one or more cities whose boundaries encompass all or a part of the area of the school district. Such an agreement will set forth a designated amount of revenues that a city or each city may receive from the tax imposed under this chapter. A city or cities entering into an Iowa Code chapter 28E agreement are authorized to expend their designated portion of taxes imposed under this chapter for any valid purpose permitted and defined under this chapter as a school infrastructure purpose or for any purpose authorized by the governing body of the city.

A school district where school infrastructure local option sales and services tax is imposed is also authorized to enter into an Iowa Code chapter 28E agreement with another school district which is located partially or entirely in or is contiguous to the county where the tax is imposed. The school district shall expend its designated portion of the school infrastructure local option sales and services revenues only for infrastructure purposes.

A county entering into an Iowa Code chapter 28E agreement with a school district in which tax under this chapter has been imposed is authorized to expend its designated portion of such tax revenues to provide property tax relief within the boundaries of the school district located in the county.

Effective July 1, 2003, a school district that has imposed tax under this chapter may enter into an Iowa Code chapter 28E agreement with a community college or area education agency that is located partially or entirely in or is contiguous to the county where the tax is imposed. The community college must expend its designated portion of the tax under this chapter only for infrastructure purposes. The area education agency must expend its designated portion of the tax under this chapter only for infrastructure and maintenance purposes.

These rules are intended to implement Iowa Code Supplement sections 422E.1 to 422E.3, 422.3A, 422E.4 and 422E.6.

NOTICE—PUBLIC FUNDS INTEREST RATES

In compliance with Iowa Code chapter 74A and section 12C.6, the committee composed of Treasurer of State

NOTICE—PUBLIC FUNDS INTEREST RATES(cont'd)

Michael L. Fitzgerald, Superintendent of Credit Unions
James E. Forney, Superintendent of Banking
Thomas B. Gronstal, and Auditor of State David A. Vaudt have established today the following rates of interest for public obligations and special assessments. The usury rate for February is 6.25%.

**INTEREST RATES FOR PUBLIC
OBLIGATIONS AND ASSESSMENTS**

74A.2 Unpaid Warrants Maximum 6.0%

74A.4 Special Assessments Maximum 9.0%

RECOMMENDED Rates for Public Obligations (74A.3) and School District Warrants (74A.7). A rate equal to 75% of the Federal Reserve monthly published indices for U.S. Government securities of comparable maturities. All Iowa Banks and Iowa Savings Associations as defined by Iowa Code section 12C.1 are eligible for public fund deposits as defined by Iowa Code section 12C.6A.

The rate of interest has been determined by a committee of the state of Iowa to be the minimum interest rate that shall be paid on public funds deposited in approved financial institutions. To be eligible to accept deposits of public funds of the state of Iowa, a financial institution shall demonstrate a commitment to serve the needs of the local community in which it

is chartered to do business. These needs include credit services as well as deposit services. All such financial institutions are required to provide the committee with a written description of their commitment to provide credit services in the community. This statement is available for examination by citizens.

New official state interest rates, effective February 10, 2004, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

TIME DEPOSITS

7-31 days Minimum 0.80%

32-89 days Minimum 0.80%

90-179 days Minimum 0.80%

180-364 days Minimum 0.90%

One year to 397 days Minimum 1.10%

More than 397 days Minimum 1.70%

These are minimum rates only. The one year and less are four-tenths of a percent below average rates. Public body treasurers and their depositories may negotiate a higher rate according to money market rates and conditions.

Inquiries may be sent to Michael L. Fitzgerald, Treasurer of State, State Capitol, Des Moines, Iowa 50319.

ARC 3171B

PUBLIC SAFETY
DEPARTMENT[661]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 103A.7, the Building Code Commissioner, with the approval of the Building Code Advisory Council, hereby amends Chapter 16, "State of Iowa Building Code," Iowa Administrative Code.

Provisions of the State of Iowa Building Code generally apply to buildings owned by the state of Iowa and to buildings and facilities constructed in local jurisdictions which have adopted the State of Iowa Building Code. Hospitals, nursing homes, and health care facilities licensed by the state of Iowa are required to comply with the applicable provisions of the rules of the State Fire Marshal (661—Chapter 5). The provisions of the rules of the State Fire Marshal which apply to hospitals, nursing homes, and other health care facilities are based upon the Life Safety Code, 2000 edition, which is a standard published by the National Fire Protection Association. Hospitals may alternatively be accredited by the Joint Commission on Accreditation of Healthcare Organizations, which also requires compliance with the same Life Safety Code requirements. Compliance with applicable requirements of the 2000 edition of the Life Safety Code is also required in order for hospitals, nursing homes, and other health care facilities to be eligible for reimbursement from the federal Medicare and Medicaid programs.

The Uniform Building Code, 1994 edition, which is adopted by reference in the State of Iowa Building Code, includes provisions related to fire protection and means of egress, subjects which are also covered by the Life Safety Code. Compliance with the fire protection and means of egress provisions of both codes simultaneously is difficult and, in some cases, may be impossible. Iowa Code section 100.38 provides that, when a building or facility is subject to the State of Iowa Building Code, and when a provision of the State of Iowa Building Code conflicts with a provision of Iowa Code chapter 100 or the rules of the State Fire Marshal, then the building code provision shall apply, and the conflicting provision of the Fire Marshal rules shall not. However, compliance with the provisions of the Fire Marshal rules is a practical necessity for hospitals, nursing homes, and other licensed health care facilities, even if these provisions conflict with provisions of the State of Iowa Building Code, because compliance with the Life Safety Code requirements is a condition of eligibility for reimbursement from the Medicaid and Medicare programs.

The amendment adopted here would relieve hospitals, nursing homes, and other licensed health care facilities which are subject to the State of Iowa Building Code of the necessity of complying with two overlapping and potentially conflicting codes. The amendment provides that these facilities, when subject to the State of Iowa Building Code, would be deemed to be in compliance with the provisions of Chapter 7 (Fire-Resistant Materials and Construction) and Chapter 10 (Means of Egress) and other provisions of the Uniform Building Code, 1994 edition, which are inconsistent with applicable provisions of the Life Safety Code, if they are in compliance with the applicable provisions of the Life Safety Code, 2000 edition.

Pursuant to Iowa Code subsection 17A.4(2), the Department finds that notice and public participation prior to the

adoption of this amendment is impractical. Being required to comply with overlapping and potentially conflicting provisions of two separate codes creates a burden upon hospitals, nursing homes, and other health care facilities licensed by the state of Iowa and subject to the State of Iowa Building Code such that any renovation, remodeling, or construction of these facilities may be impractical unless these potential conflicts are removed. Delays in such approvals for the period of time required for regular adoption of this amendment would create substantial hardships.

Pursuant to Iowa Code section 17A.5(2)“b”(2), the Department further finds that the normal effective date of this amendment, 35 days after publication, should be waived and this amendment made effective February 1, 2004, after filing with the Administrative Rules Coordinator. This amendment confers a benefit upon the public by reducing potential confusion regarding applicable fire safety requirements for hospitals, nursing homes, and other health care facilities which are subject to the State of Iowa Building Code, thereby facilitating the approval of proposed construction, renovation, or remodeling of these facilities.

Notice of Intended Action is published herein as **ARC 3172B**. The Notice of Intended Action will allow for public comment regarding this amendment.

This amendment is intended to implement Iowa Code section 103A.7.

This amendment became effective on February 1, 2004.

The following amendment is adopted.

Amend rule 661—16.130(103A) by adding the following **new** subrule:

16.130(15) Hospitals and health care facilities.

a. A hospital, as defined in rule 661—5.900(100), that is required to meet the provisions of 661—Chapter 16 shall be deemed to be in compliance with the provisions of the Uniform Building Code, 1994 edition, Chapters 7 and 10, if it is in compliance with the provisions of rule 661—5.905(100). In any other case in which an applicable requirement of the Life Safety Code, 2000 edition, is inconsistent with an applicable requirement of the Uniform Building Code, 1994 edition, the hospital shall be deemed to be in compliance with the Uniform Building Code requirement if the Life Safety Code requirement is met.

b. A nursing facility or a hospice, as defined in rule 661—5.900(100), that is required to meet the provisions of 661—Chapter 16 shall be deemed to be in compliance with the provisions of the Uniform Building Code, 1994 edition, Chapters 7 and 10, if it is in compliance with the provisions of rule 661—5.910(100). In any other case in which an applicable requirement of the Life Safety Code, 2000 edition, is inconsistent with an applicable requirement of the Uniform Building Code, 1994 edition, the nursing facility or hospice shall be deemed to be in compliance with the Uniform Building Code requirement if the Life Safety Code requirement is met.

c. An intermediate care facility for the mentally retarded, as defined in rule 661—5.900(100), or an intermediate care facility for persons with mental illness that is required to meet the provisions of 661—Chapter 16 shall be deemed to be in compliance with the provisions of the Uniform Building Code, 1994 edition, Chapters 7 and 10, if it is in compliance with the provisions of rule 661—5.915(100). In any other case in which an applicable requirement of the Life Safety Code, 2000 edition, is inconsistent with an applicable requirement of the Uniform Building Code, 1994 edition, the intermediate care facility shall be deemed to be in

PUBLIC SAFETY DEPARTMENT[661](cont'd)

compliance with the Uniform Building Code requirement if the Life Safety Code requirement is met.

d. An ambulatory health care facility, as defined in rule 661—5.900(100), that is required to meet the provisions of 661—Chapter 16 shall be deemed to be in compliance with the provisions of the Uniform Building Code, 1994 edition, Chapters 7 and 10, if it is in compliance with the provisions of rule 661—5.920(100). In any other case in which an applicable requirement of the Life Safety Code, 2000 edition, is inconsistent with an applicable requirement of the Uniform Building Code, 1994 edition, the ambulatory health care facility shall be deemed to be in compliance with the Uniform Building Code requirement if the Life Safety Code requirement is met.

e. A religious nonmedical health care institution that is required to meet the provisions of 661—Chapter 16 shall be

deemed to be in compliance with the provisions of the Uniform Building Code, 1994 edition, Chapters 7 and 10, if it is in compliance with the provisions of rule 661— 5.925(100). In any other case in which an applicable requirement of the Life Safety Code, 2000 edition, is inconsistent with an applicable requirement of the Uniform Building Code, 1994 edition, the religious nonmedical health care institution shall be deemed to be in compliance with the Uniform Building Code requirement if the Life Safety Code requirement is met.

[Filed emergency 1/30/04, effective 2/1/04]

[Published 2/18/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/18/04.

ARC 3175B**ACCOUNTANCY EXAMINING
BOARD[193A]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 542.4, the Accountancy Examining Board hereby amends Chapter 3, "Certification of CPAs," and Chapter 12, "Fees," Iowa Administrative Code.

The amendments to Chapter 3 implement the transition from pencil and paper to computerization of the Uniform National Examination for Certified Public Accountants beginning in April 2004. The amendments to Chapter 12 allow a range of fees rather than a set fee to cover the cost of examination to the candidate. These fees are paid directly to the Board's examination administrator, and the range of fees will save the Board's changing the rules each time a fee increase is adopted, but still allow the Board to limit the fees to be collected.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 24, 2003, as **ARC 3049B**. No public comment was received. These amendments are identical to those published under Notice of Intended Action.

These amendments were adopted by the Board on January 30, 2004.

These amendments shall become effective March 24, 2004.

These amendments are intended to implement Iowa Code chapter 542.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [3.1 to 3.15, 12.1] is being omitted. These amendments are identical to those published under Notice as **ARC 3049B**, IAB 12/24/03.

[Filed 1/30/04, effective 3/24/04]
[Published 2/18/04]

[For replacement pages for IAC, see IAC Supplement 2/18/04.]

ARC 3161B**ADMINISTRATIVE SERVICES
DEPARTMENT[11]****Adopted and Filed**

Pursuant to the authority of Iowa Code Supplement section 8A.104, the Department of Administrative Services hereby adopts new Chapter 40, "Offset of Debts Owed State Agencies," Iowa Administrative Code.

The purpose of this rule making is to adopt rules on offset of payments owed to persons and entities with liabilities owed to state agencies, which were formerly under the authority of and adopted by the Department of Revenue and Finance. The responsibility for offsets has been transferred to the Department of Administrative Services by the 80th General Assembly in 2003 Iowa Acts, chapter 145, section 86.

This chapter was also Adopted and Filed Emergency and published in the December 24, 2003, Iowa Administrative

Bulletin as **ARC 3063B**. Notice of Intended Action for this new chapter was published in the Iowa Administrative Bulletin on December 24, 2003, as **ARC 3066B**. The department received no comments. These rules are identical to those published under Notice of Intended Action.

These rules were adopted January 28, 2004.

These rules are intended to implement Iowa Code Supplement section 8A.504.

These rules will become effective on March 24, 2004, at which time the Adopted and Filed Emergency rules are hereby rescinded.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 40] is being omitted. These rules are identical to those published under Notice as **ARC 3066B** and Adopted and Filed Emergency as **ARC 3063B**, IAB 12/24/03.

[Filed 1/28/04, effective 3/24/04]
[Published 2/18/04]

[For replacement pages for IAC, see IAC Supplement 2/18/04.]

ARC 3159B**ADMINISTRATIVE SERVICES
DEPARTMENT[11]****Adopted and Filed**

Pursuant to the authority of Iowa Code Supplement sections 8A.104 and 8A.413, the Department of Administrative Services hereby amends and transfers rules of the former Department of Personnel[581], Chapter 4, "Pay"; Chapter 5, "Recruitment, Application and Examination"; Chapter 6, "Eligible Lists"; Chapter 7, "Filling Vacancies"; Chapter 8, "Appointments"; Chapter 9, "Probationary Period"; Chapter 10, "Promotion, Transfer, Temporary Assignment, Reassignment and Voluntary Demotion"; Chapter 16, "Political Activity"; Chapter 18, "Conduct of Employees"; and Chapter 19, "General Administration," to the Department of Administrative Services[11], Chapter 53, "Pay"; Chapter 54, "Recruitment, Application and Examination"; Chapter 55, "Eligible Lists"; Chapter 56, "Filling Vacancies"; Chapter 57, "Appointments"; Chapter 58, "Probationary Period"; Chapter 59, "Promotion, Transfer, Temporary Assignment, Reassignment and Voluntary Demotion"; Chapter 65, "Political Activity"; and Chapter 66, "Conduct of Employees," Iowa Administrative Code.

The purpose of this rule making is to comply with statutory changes enacted by the 80th General Assembly in 2003 Iowa Acts, chapter 145. Differences between the original chapters and the renumbered chapters include:

- Removing references to "trainee appointments," a concept that is not currently in use, from 11—Chapter 53;
- Clarifying the provisions in 11—Chapter 53 for setting the pay of employees returning from leave or employees recalled from layoff;
- In 11—Chapter 54, changing the period of time for which recruitment notices are posted from 15 to 10 days, to reflect the current statutory requirement;
- Incorporating rule 581—19.16(19A) as rule 11—54.7(8A); and

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

- Correcting the date of a previously established retroactive provision on reinstatement in 11—Chapter 57.

Notice of Intended Action was published in the December 24, 2003, Iowa Administrative Bulletin as **ARC 3036B**. No comments were received. The adopted amendments are identical to those published under Notice.

These amendments were adopted January 28, 2004.

These amendments will become effective on March 24, 2004.

These amendments are intended to implement Iowa Code Supplement sections 8A.401, 8A.402, 8A.411 to 8A.418, 8A.439, 8A.452, 8A.453, 8A.455, 8A.456 and 8A.458 and Iowa Code chapter 68B.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [transfer 581—Chs 4 to 10, 16, 18, 19 to 11—Chs 53 to 59, 65, 66; amendments to Chs 53 to 59, 65, 66] is being omitted. These amendments are identical to those published under Notice as **ARC 3036B**, IAB 12/24/03.

[Filed 1/28/04, effective 3/24/04]
[Published 2/18/04]

[For replacement pages for IAC, see IAC Supplement 2/18/04.]

ARC 3160B**ADMINISTRATIVE SERVICES
DEPARTMENT[11]****Adopted and Filed**

Pursuant to the authority of Iowa Code Supplement section 8A.104, the Department of Administrative Services hereby amends and transfers rules of the former Department of Personnel[581], Chapter 23, "Employee Organization Dues," to the Administrative Services Department[11], Chapter 70, "Employee Organization Dues," Iowa Administrative Code.

The purpose of this rule making is to comply with statutory changes enacted by the 80th General Assembly in 2003 Iowa Acts, chapter 145, by transferring rules regarding employee organization dues from the former Department of Personnel to the new Department of Administrative Services. Changes are solely editorial in nature.

Notice of Intended Action was published in the December 24, 2003, Iowa Administrative Bulletin as **ARC 3065B**. No comments were received. The adopted amendments are identical to those published under Notice.

These amendments were adopted January 28, 2004.

These amendments will become effective on March 24, 2004.

These amendments are intended to implement Iowa Code chapter 20.

The following amendments are adopted.

- ITEM 1. Transfer **581—Chapter 23** to **11—Chapter 70**.

- ITEM 2. Amend **11—Chapter 70** by replacing all internal references to Chapter 23 with references to Chapter 70.

[Filed 1/28/04, effective 3/24/04]

[Published 2/18/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/18/04.

ARC 3158B**AGRICULTURE AND LAND
STEWARDSHIP DEPARTMENT[21]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 159.5 and 163.1 and Iowa Code Supplement section 202C.4, the Department of Agriculture and Land Stewardship hereby amends Chapter 66, "Livestock Movement," Iowa Administrative Code.

The amendments establish a financial requirement of a bond or an irrevocable letter of credit for feeder pig dealers. This bond or letter of credit is to provide a secured asset for the recovery of damages incurred by a feeder pig purchaser who suffers damages because of sick or diseased pigs obtained from a feeder pig dealer or who otherwise suffers damages arising from a breach of contract by the feeder pig dealer. The amount of the bond is to be set on a sliding scale based upon the volume of sales by the feeder pig dealer.

Notice of Intended Action was published in the Iowa Administrative Bulletin on November 26, 2003, as **ARC 2957B**. The adopted amendments are identical to the amendments published under Notice of Intended Action.

No waiver provision is included in these amendments because an existing rule allows for waivers in appropriate cases. The waiver rule applies to these amendments.

These amendments are intended to implement Iowa Code chapter 163 and Iowa Code Supplement chapter 202C.

These amendments will become effective June 1, 2004.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [66.13, 66.20"1"] is being omitted. These amendments are identical to those published under Notice as **ARC 2957B**, IAB 11/26/03.

[Filed 1/27/04, effective 6/1/04]
[Published 2/18/04]

[For replacement pages for IAC, see IAC Supplement 2/18/04.]

ARC 3157B**COLLEGE STUDENT AID
COMMISSION[283]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 261.3, the College Student Aid Commission hereby amends Chapter 14, "Osteopathic Physician Recruitment Program," Iowa Administrative Code.

COLLEGE STUDENT AID COMMISSION[283](cont'd)

The adopted amendments increase state-funded loan repayment awards from up to \$30,000 to up to \$40,000 and are intended to help communities with limited resources recruit and retain qualified physicians. The amendments also will help correct an imbalance in the annual after-tax benefits that has developed as tuition scholarships have automatically increased with tuition charges while loan repayment benefits have remained unchanged even though students are borrowing more to meet increased costs. Finally, these amendments update the official name of the university, include emergency room medicine under the category of primary care, and make a minor change to language in order to reflect the definition of "eligible rural community."

Notice of Intended Action was published in the December 10, 2003, Iowa Administrative Bulletin as **ARC 2988B**. No comments were received from the public. The adopted amendments are identical to those published under Notice.

These amendments were approved during the January 20, 2004, meeting of the College Student Aid Commission.

These amendments will become effective March 24, 2004.

These amendments are intended to implement Iowa Code section 17A.3(1)"a" and "b" and chapter 261.

The following amendments are adopted.

ITEM 1. Amend **283—Chapter 14**, preamble, as follows:

PREAMBLE

The osteopathic physician recruitment program administered by the college student aid commission is a state-supported program that consists of forgivable loans and tuition scholarships for students and loan repayment benefits for graduates of the Des Moines University Osteopathic Medical Center, hereinafter "university," Des Moines, Iowa.

ITEM 2. Amend rule **283—14.1(261)**, definition of "primary care," as follows:

"Primary care" means family medicine, general internal medicine, and pediatrics, *and emergency room medicine*.

ITEM 3. Amend subrules 14.4(3) and 14.4(4) as follows:

14.4(3) Award. The physician may receive up to \$30,000 \$40,000 in state-funded repayment benefits when a community agrees to fund matching benefits of at least \$30,000 \$40,000.

14.4(4) Disbursement.

a. The commission shall disburse state funds to the university upon receipt of the physician's contract to practice in *an eligible rural physician shortage* community.

b. No change.

[Filed 1/24/04, effective 3/24/04]

[Published 2/18/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/18/04.

ARC 3156B

COLLEGE STUDENT AID
COMMISSION[283]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 261.3, 261.37(5), and 261B.3A, the College Student Aid Commission hereby amends Chapter 21, "Approval of Postsecondary Schools," Iowa Administrative Code.

The adopted amendment requires that applicant schools meet all certification, accreditation, and approval standards established for Iowa colleges and universities that offer programs substantially the same as those offered by the applicant school.

Notice of Intended Action was published in the October 29, 2003, Iowa Administrative Bulletin as **ARC 2884B**. Comments were received from Iowa college officials at Drake University, Simpson College, and St. Ambrose University, who voiced support for the amendment. The adopted amendment is identical to that published under Notice.

This amendment was approved during the January 20, 2004, meeting of the College Student Aid Commission.

This amendment will become effective March 24, 2004.

This amendment is intended to implement Iowa Code section 261B.3A.

The following amendment is adopted.

Amend rule 283—21.1(78GA,SF2248) as follows:

283—21.1(78GA,SF2248 261B) **Approval criteria.** The college student aid commission shall approve applicant schools that:

1. Are accredited by an agency recognized by the United States Department of Education or its successor agency.

2. Are approved for operation by the appropriate state agencies in all other states in which the schools operate or maintain a presence.

3. Are not subject to a limitation, suspension or termination order issued by the United States Department of Education or its successor agency.

4. Are free of sanctions from the schools' accrediting agencies and appropriate state agencies in all other states in which the schools operate or maintain a presence.

5. Enroll students who attend classes in Iowa and employ at least one full-time Iowa faculty member or program coordinator with graduate degrees, special training, experience, creative production or other accomplishments or distinctions that qualify them for their specific assignments.

6. Comply with Iowa Code section 261B.7 limiting the use of references to the secretary of state, state of Iowa, or college student aid commission in promotional material.

7. Comply with the requirements of Iowa Code section 261.9(1)"e" to "h."

8. File annual reports that the commission requires from all Iowa colleges and universities.

9. Have submitted a description of a proposed program(s) to members of the Iowa coordinating council for post-high school education and have responded to any inquiries or concerns.

10. *Meet all certification, accreditation, and approval standards established for Iowa colleges and universities that offer programs substantially the same as those offered by the applicant school.*

This rule is intended to implement Iowa Code chapter 261B.

[Filed 1/24/04, effective 3/24/04]

[Published 2/18/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/18/04.

ARC 3178B**EDUCATIONAL EXAMINERS
BOARD[282]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby amends Chapter 11, "Complaints, Investigations, Contested Case Hearings," Iowa Administrative Code.

This new rule sets forth procedures to implement the requirement in Iowa Code Supplement section 272.15 for mandatory reporting of contract terminations and resignations based upon allegations of misconduct.

Notice of Intended Action was published in the Iowa Administrative Bulletin on November 12, 2003, as **ARC 2929B**. A public hearing on the amendment was held on December 9, 2003. No one attended the public hearing and no written comments were received. This amendment is identical to that published under Notice.

This amendment is intended to implement Iowa Code chapter 272.

This amendment will become effective March 24, 2004.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of this amendment [11.37] is being omitted. This amendment is identical to that published under Notice as **ARC 2929B**, IAB 11/12/03.

[Filed 1/30/04, effective 3/24/04]
[Published 2/18/04]

[For replacement pages for IAC, see IAC Supplement 2/18/04.]

ARC 3169B**ENVIRONMENTAL PROTECTION
COMMISSION[567]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 459.103, the Environmental Protection Commission hereby amends Chapter 65, "Animal Feeding Operations," Iowa Administrative Code.

The amendments modify the construction design standards for formed manure storage structures as prescribed by 2002 Iowa Acts, chapter 1137. The standards include upgraded requirements for formed manure storage structures in karst areas and separate construction design standards for formed manure storage structures that store manure exclusively in a dry form.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 20, 2003, as **ARC 2716B**.

Written comments were received by the Department. In addition, oral comments were received by the Department at a public hearing held on September 11, 2003.

As a result of the written and oral comments, the following changes have been made to the Notice of Intended Action:

1. The introductory paragraph of subrule 65.15(14) has been modified to address the Iowa Engineering Society's

concerns. As a result, a definition has been added for a professional engineer licensed in the state of Iowa (PE) and for an engineer working for the USDA Natural Resources Conservation Service (NRCS engineer).

2. Adopted subrule 65.15(14) now provides alternative design methods, other than the DNR minimum standards initially proposed in the Notice. These alternative design methods include a design prepared and sealed by a PE or an NRCS engineer. When a PE or an NRCS engineer is not involved, the design shall be in accordance with MidWest Plan Service (MWPS) or in accordance with DNR minimum standards. This will allow for a more flexible, site-specific design and industry-based standards. If the design is prepared and sealed by a PE or an NRCS engineer, it shall be in conformance with the American Concrete Institute (ACI) Building Code ACI 318, ACI 360, or ACI 350; or MWPS-36 or MWPS TR-9; or Portland Cement Association (PCA) publication EB075, EB001, or IS072; or a combination. These technical documents meet or exceed the proposed minimum concrete standards set forth in the Notice.

3. Furthermore, subrule 65.15(14) requires that additional minimum concrete standards be met if the design of a formed manure storage structure is not prepared and sealed by a PE or an NRCS engineer.

4. For the subgrade preparation required in 65.15(14)"a"(2), numbered paragraph "1," a definition of the term "uniform" has been added for clarification purposes. Adopted subrule 65.15(14) requires that if the subgrade is nonuniform, it shall be made uniform. This specification, however, is only for a formed manure storage structure that is not designed and sealed by a PE or an NRCS engineer, due to the reasons explained in "2" above.

5. In 65.15(14)"a"(2), numbered paragraph "2," the requirement to install a drain tile at 2 feet below the footing elevation required has been modified. Several comments indicated this requirement might compromise the structural stability due to the need to place fill material underneath the footings. Comments recommended that the drain tile be installed right at the footing elevation, instead of at 2 feet below the footing, as initially proposed. A new Figure D-1 has been added at the end of Chapter 65 to illustrate the ideal location of the drain tile. In addition, the option to install fabric around the drain tile or a combination of fabric and granular material has been added. This specification, however, is only for a formed manure storage structure with a design not sealed by a PE or an NRCS engineer, due to the reasons explained in "2" above.

6. The requirements for concrete have been expanded in 65.15(14)"a"(2), numbered paragraph "4," to include blended cements. This specification, however, is only for a formed manure storage structure with a design not sealed by a PE or an NRCS engineer, due to the reasons explained in "2" above.

7. The minimum floor design requirements have been modified as follows in 65.15(14)"a"(1), numbered paragraphs "1" and "2," 65.15(14)"a"(2), numbered paragraph "8," and 65.15(14)"b"(2) and (3). The requirement that the floor be a minimum of 5 inches thick is for a nondry manure storage structure regardless of who designs the structure and for a dry manure storage structure that is not designed and sealed by a PE or an NRCS engineer. Wire mesh is not accepted as primary reinforcement for a formed manure storage structure with a depth of 4 feet or more regardless of who designs the structure. However, wire mesh can be used as shrinkage reinforcement in floor slabs of a formed manure storage structure with a depth of less than 4 feet. Fiber is not

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

accepted as reinforcement, except for a dry manure storage structure designed and sealed by a PE or an NRCS engineer. In addition, clarification on the placement of the steel reinforcement has been added. Furthermore, in response to comments, the adopted subrule allows for floor thickness tolerances in accordance with industry standards. Finally, if a formed manure storage structure is not designed and sealed by a PE or an NRCS engineer, floor thickness verification will be limited to nondestructive methods.

8. The minimum dimensions required for footings have been modified slightly in 65.15(14)“a”(2), numbered paragraph “9,” and 65.15(14)“b”(3). This specification, however, is only for a formed manure storage structure with a design not sealed by a PE or an NRCS engineer, due to the reasons explained in “2” above.

9. The minimum wall design has also been modified. Several comments indicated the initially proposed standards were “one size fits all” and did not allow for site-specific design considerations and that they restricted the design prepared and sealed by a PE or an NRCS engineer. Therefore, the standards in 65.15(14)“a”(1) and 65.15(14)“b”(1) accept a wall design prepared and sealed by a PE or an NRCS engineer, due to the reasons explained in “2” above. For cases in which a PE or an NRCS engineer is not involved, 65.15(14)“a”(2) and 65.15(14)“b”(3) refer to tables with varying minimum wall thickness and steel reinforcement requirements according to depth of the formed structure, vehicle traffic and type of backfill material used. Comments from the Iowa Farm Bureau Federation and Iowa Pork Producers Association suggested that DNR work with MidWest Plan Service (MWPS) to develop design specifications and tables based on depth of the formed manure storage structure and other factors. These new tables are in a new Appendix D at the end of the chapter.

10. In 65.15(14)“a”(1), numbered paragraph “4,” 65.15(14)“a”(2), numbered paragraph “10,” and 65.15(14)“b”(2) and (3), the requirements for vertical steel or dowels have been modified to provide an alternative to the 90° bent dowel requirement and to provide an alternative for interior walls.

11. The term “load bearing wall” used in the Notice at 65.15(14)“a”(10) and 65.15(14)“b”(10) has been deleted.

12. The concrete curing requirements have been modified in 65.15(14)“a”(2), numbered paragraph “12,” to provide a description of alternative methods for concrete curing. This specification, however, is only for a formed manure storage structure with a design not sealed by a PE or an NRCS engineer, due to the reasons explained in “2” above.

13. The waterstop and keyway requirements have been modified as follows. The keyway requirement has been eliminated. The waterstop requirements in 65.15(14)“a”(1), numbered paragraph “3,” and 65.15(14)“a”(2), numbered paragraph “13,” have been expanded to allow rolled bentonite and to include a reference to Appendix D, Figures D-1 and D-2, at the end of Chapter 65 to better illustrate installation.

14. The requirement that contraction joints be not more than 100 feet apart, proposed in the Notice at 65.15(14)“a”(15) and 65.15(14)“b”(14), has been removed because it is not an industry standard.

15. The concrete standards required for a structure storing manure exclusively in a dry form have also been modified. Several comments recommended that these standards be tailored to the characteristics of dry manure and current industry practices (mainly poultry), thereby eliminating unnecessary expenses without causing environmental damage. In addition, several comments suggested that the standards al-

low for alternative designs that are submitted by a PE or an NRCS engineer. In response to this suggestion and because of the explanation in “2” above, the adopted subrule allows for a design prepared and sealed by a PE or an NRCS engineer for a dry manure storage structure in lieu of the DNR minimum concrete standards. Most facilities store dry manure in formed structures aboveground. If a formed manure storage structure is not designed and sealed by a PE or an NRCS engineer and is above the ground, the adopted subrule requires that only certain concrete standards for nondry manure be met, but if a formed manure storage structure for the storage of manure exclusively in a dry form is to be constructed below or partially below the ground and is not designed and sealed by a PE or an NRCS engineer, all of the concrete standards for nondry manure must be met.

16. The upgraded concrete standards for karst areas in 65.15(14)“c” have been modified. The phrase “sinkholes within one-half mile” has been eliminated because several comments received mentioned that it was not compatible with the language provided in the statute. Adopted paragraph “c” maintains the language prescribed in Iowa Code section 459.307 and requires upgraded concrete standards in “an area that exhibits karst terrain or an area that drains into a known sinkhole.” DNR will provide contact information by which the location of these karst areas and known sinkholes can be identified.

17. The language in 65.15(14)“c”(1) has been modified as a result of further technical review. The adopted subparagraph requires a vertical separation of at least 5 feet between the bottom of a formed structure and limestone, dolomite or other soluble rock unless the structure is designed by a PE or an NRCS engineer.

18. Subparagraph 65.15(14)“c”(2) has been modified to require a compacted liner below the floor of the formed structure if the vertical separation between the bottom of the formed structure and the limestone, dolomite or other soluble rock is less than 5 feet. Also, as a result of public comments, the Department is recommending that in those cases an aboveground structure should be constructed (instead of a belowground structure).

19. Subparagraph 65.15(14)“c”(3) has also been modified to require that the soil borings or test pits for a soil investigation be performed by a PE, an NRCS engineer or a qualified organization. In addition, in response to several comments, a requirement that these soil borings or test pits be properly plugged, using similar language contained in other sections of the chapter, has been added.

20. New subparagraphs 65.15(14)“c”(4) and (5) have been added for structures constructed in areas that exhibit karst terrain or that drain into known sinkholes. Groundwater monitoring must be performed as specified by DNR, and backfill requirements are provided.

21. Comments received from the regulated community, through Iowa Farm Bureau Federation and Iowa Pork Producers Association, suggested that the Department work with MidWest Plan Service (MWPS) to develop design specification tables. Accordingly, a new Appendix D has been added to the end of Chapter 65. This new appendix includes five tables with design specifications for formed manure storage structures and two figures to illustrate requirements pertaining to waterstops and footing drain tile. Appendix D applies to a formed manure storage structure that is not required to be designed and sealed by a PE or an NRCS engineer.

These amendments are intended to implement Iowa Code section 459.307.

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These amendments will become effective on March 24, 2004.

The following amendments are adopted.

ITEM 1. Rescind subrule 65.15(14) and adopt in lieu thereof the following **new** subrule:

65.15(14) Concrete standards. A formed manure storage structure which is constructed of concrete on or after March 24, 2004, that is part of a confinement feeding operation other than a small animal feeding operation shall meet the following minimum standards. For the purpose of this subrule, a "PE" is a professional engineer licensed in the state of Iowa and an "NRCS engineer" is an engineer working for the USDA Natural Resources Conservation Service (NRCS). (CAVEAT: These standards are not intended to address other site-related engineering and construction considerations beyond the department's jurisdiction.)

a. Nondry manure storage. The following minimum concrete standards are required for a formed manure storage structure other than that used for the storage of manure exclusively in a dry form. A formed manure storage structure must be designed in accordance with one of the following design methods:

(1) Engineering report, plans and specifications prepared and sealed by a PE or an NRCS engineer. Design considerations shall be in conformance with the American Concrete Institute (ACI) Building Code ACI 318, ACI 360 or ACI 350; or Portland Cement Association (PCA) publication EB075, EB001 or IS072; or MidWest Plan Service (MWPS) publication MWPS-36 or MWPS TR-9, and shall include all of the following:

1. The floors shall be a minimum of 5 inches thick. Non-destructive methods to verify the floor slab thickness may be required by the department. The results shall indicate that at least 95 percent of the floor slab area meets the minimum required thickness. In no case shall the floor slab thickness be less than 4½ inches.

2. Wire mesh shall not be used as primary reinforcement for a formed manure storage structure with a depth of 4 feet or more. Fiber shall not be used as reinforcement.

3. Waterstops shall be installed in all areas where fresh concrete meets hardened concrete. Waterstops shall be made of plastic, rolled bentonite or similar materials approved by the department.

4. The vertical steel of all walls shall be extended into the footing and be bent at 90° or a separate dowel shall be installed. As an alternate to the 90° bend, the dowel may be extended at least 12 inches into the footing, with a minimum concrete cover of 3 inches at the bottom. In lieu of dowels, mechanical means or alternate methods may be used as anchorage of interior walls to footings.

(2) If a formed manure storage structure is not designed and sealed by a PE or an NRCS engineer, the design and specifications shall be in conformance with MWPS-36 (for a belowground rectangular tank) or MWPS TR-9 (for a circular tank); or in accordance with Appendix D at the end of this chapter (for a belowground, laterally braced rectangular tank). In addition, all of the following concrete standards shall apply:

1. The finished subgrade of a formed manure storage structure shall be graded and compacted to provide a uniform and level base and shall be free of vegetation, manure and debris. For the purpose of this subrule, "uniform" means a finished subgrade with similar soils.

2. When the groundwater table, as determined in 65.15(7)"c," is above the bottom of the formed structure, a drain tile shall be installed along the footings to artificially

lower the groundwater table pursuant to 65.15(7)"b." The drain tile shall be placed within 3 feet of the footings as indicated in Appendix D, Figure D-1, at the end of this chapter and shall be covered with a minimum of 2 inches of gravel, granular material, fabric or a combination of these materials to prevent plugging the drain tile.

3. All concrete shall have the following minimum as-placed compressive strengths and shall meet American Society for Testing and Materials (ASTM) standard ASTM C 94:

- 4,000 pounds per square inch (psi) for walls, floors, beams, columns and pumpouts;
- 3,000 psi for the footings.

The average concrete strength by testing shall not be below design strength. No single test result shall be more than 500 psi less than the minimum compressive strength.

4. Cementitious materials shall consist of portland cement conforming to ASTM C 150. Aggregates shall conform to ASTM C 33. Blended cements in conformance with ASTM C 595 are allowed only for concrete placed between March 15 and October 15. Portland-pozzolan cement or portland blast furnace slag blended cements shall contain at least 75 percent, by mass, of portland cement.

5. All concrete placed for walls shall be consolidated or vibrated, by manual or mechanical means, or a combination, in a manner which meets ACI 309.

6. All rebar used shall be a minimum of grade 40 steel. All rebar, with the exception of rebar dowels connecting the walls to the floor or footings, shall be secured and tied in place prior to the placing of concrete.

7. All wall reinforcement shall be placed so as to have a rebar cover of 2 inches from the inside face of the wall for a belowground manure storage structure. Vertical wall reinforcement should be placed closest to the inside face. Rebar placement shall not exceed tolerances specified in ACI 318.

8. The floor slab shall be a minimum of 5 inches thick. The floor slab of any formed manure storage structure with a depth of 4 feet or more shall have primary reinforcement consisting of a minimum of #4 rebar placed a maximum of 18 inches on center in each direction placed in a single mat. The floor slab of any formed manure storage structure with a depth less than 4 feet shall have shrinkage reinforcement consisting of a minimum of 6 × 6-W1.4 × W1.4 welded wire fabric. Floor slab reinforcement shall be located in the middle of the thickness of the floor slab. Nondestructive methods to verify the floor slab thickness may be required by the department. The results shall indicate that at least 95 percent of the floor slab area meets the minimum required thickness. In no case shall the floor slab thickness be less than 4½ inches.

9. The footing or the area where the floor comes in contact with the walls and columns shall have a thickness equal to the wall thickness, but in no case be less than 8 inches, and the width shall be at least twice the thickness of the footing. All exterior walls shall have footings below the frostline. Tolerances shall not exceed -½ inch of the minimum footing dimensions.

10. The vertical steel of all walls shall be extended into the footing, and be bent at 90° or a separate dowel shall be installed as a #4 rebar that is bent at 90° with at least 20 inches of rebar in the wall and extended into the footing within 3 inches of the bottom of the footing and extended at least 3 inches horizontally, as indicated in Appendix D, Figure D-1, at the end of this chapter. As an alternative to the 90° bend, the dowel may be extended at least 12 inches into the footing, with a minimum concrete cover of 3 inches at the bottom. Dowel spacing (bend or extended) shall be the same as the

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spacing for the vertical rebar. In lieu of dowels, mechanical means or alternate methods may be used as anchorage of interior walls to footings.

11. All walls shall be formed with rigid forming systems and shall not be earth-formed.

12. All concrete shall be cured for at least seven days after placing, in a manner which meets ACI 308, by maintaining adequate moisture or preventing evaporation. Proper curing shall be done by ponding, spraying or fogging water; or by using a curing compound that meets ASTM C 309; or by using wet burlap, plastic sheets or similar materials.

13. All construction joints in exterior walls shall be constructed to prevent discontinuity of steel and have properly spliced rebar placed through the joint. Waterstops shall be installed in all areas where fresh concrete will meet hardened concrete as indicated in Appendix D, Figures D-1 and D-2, at the end of this chapter. The waterstops shall be made of plastic, rolled bentonite or similar materials approved by the department.

14. Backfilling of the walls shall not start until the floor slats or permanent bracing have been installed. Backfilling shall be performed with material free of vegetation, large rocks or debris.

15. A formed manure storage structure with a depth greater than 12 feet shall be designed by a PE or an NRCS engineer.

b. Dry manure storage. A formed structure for the storage of manure exclusively in a dry form shall be designed and constructed in accordance with one of the following:

(1) Engineering report, plans and specifications prepared and sealed by a PE or an NRCS engineer. Design considerations shall be in conformance with the American Concrete Institute (ACI) Building Code ACI 318 or ACI 360; or Portland Cement Association (PCA) publication EB075, EB001 or IS072; or Midwest Plan Service (MWPS) publication MWPS-36.

(2) If a formed manure storage structure that stores manure exclusively in a dry form is to be constructed aboveground and the design is not prepared and sealed by a PE or an NRCS engineer, the requirements set forth in 65.15(14)"a"(2), numbered paragraphs "1," "3," "4," "5," "6," "8" and "12," shall apply. Consideration shall be given to internal and external loads including, but not limited to, wind loads, building load, manure pile and equipment vehicle loads.

(3) If the formed structure that stores manure exclusively in a dry form is to be constructed below or partially below the ground and the design is not prepared and sealed by a PE or an NRCS engineer, the requirements set forth in

65.15(14)"a"(2), numbered paragraphs "1" through "15," shall apply. Wall design shall be in accordance with Appendix D at the end of this chapter or in accordance with MWPS-36. Consideration shall be given to internal and external loads including, but not limited to, lateral earth pressures, hydrostatic pressures, wind loads, manure pile and equipment vehicle loads.

c. Karst terrain—upgraded standards. If the site of the proposed formed manure storage structure is located in an area that exhibits karst terrain or an area that drains into a known sinkhole, the minimum concrete standards set forth in 65.15(14)"a" or "b" shall apply. In addition, the following requirements apply to all formed manure storage structures that store nondry or dry manure:

(1) A minimum 5-foot vertical separation distance between the bottom of a formed manure storage structure and limestone, dolomite, or other soluble rock is required if the formed manure storage structure is not designed by a PE or an NRCS engineer.

(2) If the vertical separation distance between the bottom of the proposed formed manure storage structure and limestone, dolomite, or other soluble rock is less than 5 feet, the structure shall be designed and sealed by a PE or an NRCS engineer who certifies the structural integrity of the structure. A 2-foot-thick layer of compacted clay liner material shall be constructed underneath the floor of the formed manure storage structure. However, it is recommended that any formed manure storage structure be constructed aboveground if the vertical separation distance between the bottom of the structure and the limestone, dolomite, or other soluble rock is less than 5 feet.

(3) In addition, in an area that exhibits karst terrain or an area that drains into a known sinkhole, a PE, an NRCS engineer or a qualified organization shall submit a soil exploration study based on the results from soil borings or test pits to determine the vertical separation between the bottom of the formed structure and limestone, dolomite, or other soluble rock. A minimum of two soil borings or two test pits, equally spaced within each formed structure, are required. After soil exploration is completed, each soil boring and pit shall be properly plugged with concrete grout, bentonite, or similar materials.

(4) Groundwater monitoring shall be performed as specified by the department.

(5) Backfilling shall not start until the floor slats have been placed or permanent bracing has been installed, and shall be performed with material free of vegetation, large rocks, or debris.

ITEM 2. Amend 567—Chapter 65 by adopting the following **new** appendix:

APPENDIX D
DESIGN SPECIFICATIONS—FORMED MANURE
STORAGE STRUCTURES

The following design specifications apply to a formed manure storage structure that is constructed belowground, is laterally braced and is not designed using MWPS-36 or by a PE or an NRCS engineer:

(1) The walls of a rectangular formed structure with a depth up to 12 feet shall be designed in accordance with the tables provided in this appendix.

(2) Consideration shall be given to internal and external loads including, but not limited to, lateral earth pressures, hydrostatic pressures, wind loads, and floor or cover, building and equipment loads.

(3) Each wall shall be braced laterally at the top of the wall.

(4) The walls shall be constructed above the groundwater table, or a drain tile shall be installed to artificially lower the groundwater table.

(5) Each wall that includes a pumpout port shall be constructed under the design consideration that vehicles will be operating within 5 feet of the wall as provided in Tables D-2 and D-4.

(6) Minimum wall thickness and minimum vertical steel reinforcement shall be in accordance with one of the following:

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(a) Table D-1, if **all** of the following conditions are met:

1. There will be NO VEHICLES operating within 5 feet of the wall.
2. Backfilling is performed with gravel, sand, silt, and clay mixtures (less than 50 percent fines), with coarse sand with silt or clay (less than 50 percent fines), or cleaner granular material (see NRCS Conservation Practice Standard, "Waste Storage Facility," Code 313, Table 2, for description and unified classification or ASTM D 2488 and D 653).

APPENDIX D, TABLE D-1
Minimum Wall Thickness and Vertical Steel Reinforcement

Wall height (feet)	Wall thickness (inches)	Steel Grade			
		Grade 40		Grade 60	
		Bar	Space o.c. (inches)	Bar	Space o.c. (inches)
4 or less	6	#4	16.5	#4	18.0
		#5	18.0	#5	18.0
4 or less	8	#4	12.0	#4	13.5
		#5	18.0	#5	18.0
6	6	#4	14.5	#4	18.0
		#5	18.0	#5	18.0
6	8	#4	12.0	#4	13.5
		#5	18.0	#5	18.0
8	8	#4	9.5	#4	13.5
		#5	14.5	#5	18.0
8	10	#4	9.5	#4	11.0
		#5	15.0	#5	17.0
10	8	#4	6.5	#4	9.5
		#5	10.0	#5	13.5
10	10	#4	6.5	#4	9.5
		#5	10.0	#5	15.0
12	10	#4	5.0	#4	7.5
		#5	7.5	#5	11.5

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(b) Table D-2, if **all** of the following conditions are met:

1. There will be VEHICLES operating within 5 feet of the wall.
2. Backfilling is performed with gravel, sand, silt, and clay mixtures (less than 50 percent fines), with coarse sand with silt or clay (less than 50 percent fines), or cleaner granular material (see NRCS Conservation Practice Standard, "Waste Storage Facility," Code 313, Table 2, for description and unified classification or ASTM D 2488 and D 653).

APPENDIX D, TABLE D-2
Minimum Wall Thickness and Vertical Steel Reinforcement

Wall height (feet)	Wall thickness (inches)	Steel Grade			
		Grade 40		Grade 60	
		Bar	Space o.c. (inches)	Bar	Space o.c. (inches)
4 or less	6	#4	16.5	#4	18.0
		#5	18.0	#5	18.0
4 or less	8	#4	12.0	#4	13.5
		#5	18.0	#5	18.0
6	6	#4	10.5	#4	15.5
		#5	16.5	#5	18.0
6	8	#4	12.0	#4	13.5
		#5	18.0	#5	18.0
8	8	#4	6.5	#4	10.0
		#5	10.5	#5	16.0
8	10	#4	8.5	#4	11.0
		#5	13.5	#5	17.0
10	8	#4	4.5	#4	6.5
		#5	7.0	#5	10.5
10	10	#4	5.0	#4	7.5
		#5	8.0	#5	12.0
12	10	#4	3.5	#4	5.5
		#5	5.5	#5	8.5

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(c) Table D-3, if **all** of the following conditions are met:

1. There will be NO VEHICLES operating within 5 feet of the wall.
2. Backfilling is performed with low plasticity silts and clays with some sand or gravel (50 percent or more fines); or fine sands with silt or clay (less than 50 percent fines); or low to medium plasticity silts and clays with little sand or gravel (50 percent or more fines); or high plasticity silts and clays (see NRCS Conservation Practice Standard, "Waste Storage Facility," Code 313, Table 2, for description and unified classification or ASTM D 2488 and D 653).

APPENDIX D, TABLE D-3
Minimum Wall Thickness and Vertical Steel Reinforcement

Wall height (feet)	Wall thickness (inches)	Steel Grade			
		Grade 40		Grade 60	
		Bar	Space o.c. (inches)	Bar	Space o.c. (inches)
4 or less	6	#4	16.5	#4	18.0
		#5	18.0	#5	18.0
4 or less	8	#4	12.0	#4	13.5
		#5	18.0	#5	18.0
6	6	#4	10.5	#4	15.5
		#5	16.5	#5	18.0
6	8	#4	12.0	#4	13.5
		#5	18.0	#5	18.0
8	8	#4	6.5	#4	10.0
		#5	10.5	#5	16.0
8	10	#4	9.0	#4	11.0
		#5	14.0	#5	17.0
10	8	#4	4.5	#4	6.5
		#5	7.0	#5	10.0
10	10	#4	5.0	#4	7.5
		#5	8.0	#5	12.0
12	10	#4	3.5	#4	5.0
		#5	5.5	#5	8.0

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

(d) Table D-4, if **all** of the following conditions are met:

1. There will be VEHICLES operating within 5 feet of the wall.
2. Backfilling is performed with low plasticity silts and clays with some sand or gravel (50 percent or more fines); or fine sands with silt or clay (less than 50 percent fines); or low to medium plasticity silts and clays with little sand or gravel (50 percent or more fines); or high plasticity silts and clays (see NRCS Conservation Practice Standard, "Waste Storage Facility," Code 313, Table 2, for description and unified classification or ASTM D 2488 and D 653).

APPENDIX D, TABLE D-4
Minimum Wall Thickness and Vertical Steel Reinforcement

Wall height (feet)	Wall thickness (inches)	Steel Grade			
		Grade 40		Grade 60	
		Bar	Space o.c. (inches)	Bar	Space o.c. (inches)
4 or less	6	#4	16.5	#4	18.0
		#5	18.0	#5	18.0
4 or less	8	#4	12.0	#4	13.5
		#5	18.0	#5	18.0
6	6	#4	8.0	#4	12.0
		#5	12.5	#5	16.5
6	8	#4	9.5	#4	13.5
		#5	15.0	#5	18.0
8	8	#4	6.0	#4	9.0
		#5	9.0	#5	11.5
8	10	#4	6.0	#4	9.0
		#5	9.5	#5	14.0
10	8	#4	3.0	#4	4.5
		#5	4.5	#5	7.0
10	10	#4	4.5	#4	6.5
		#5	6.5	#5	10.0
12	10	#4	2.5	#4	4.0
		#5	4.0	#5	6.0

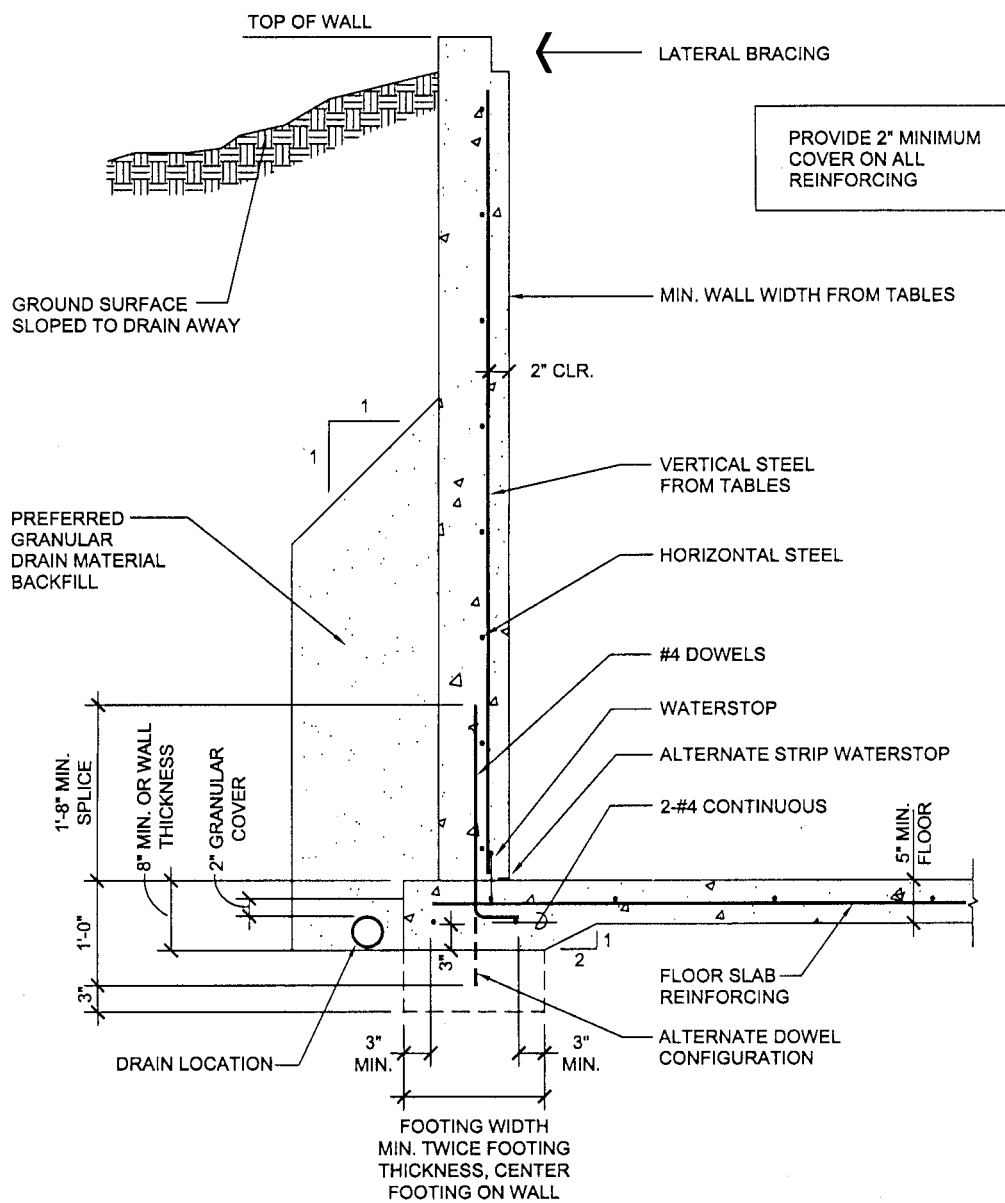
(7) Minimum horizontal steel for a rectangular tank shall be selected and placed according to Table D-5, regardless of wall height, and shall be tied to the soil side of vertical steel:

APPENDIX D, TABLE D-5
Minimum Wall Horizontal Steel Reinforcement

Wall thickness (inches)	Steel Grade			
	Grade 40		Grade 60	
	Bar	Space o.c. (inches)	Bar	Space o.c. (inches)
6	#4	16.5	#4	18.0
	#5	18.0	#5	18.0
8	#4	12.0	#4	13.5
	#5	18.0	#5	18.0
10	#4	9.5	#4	11.0
	#5	15.0	#5	17.0

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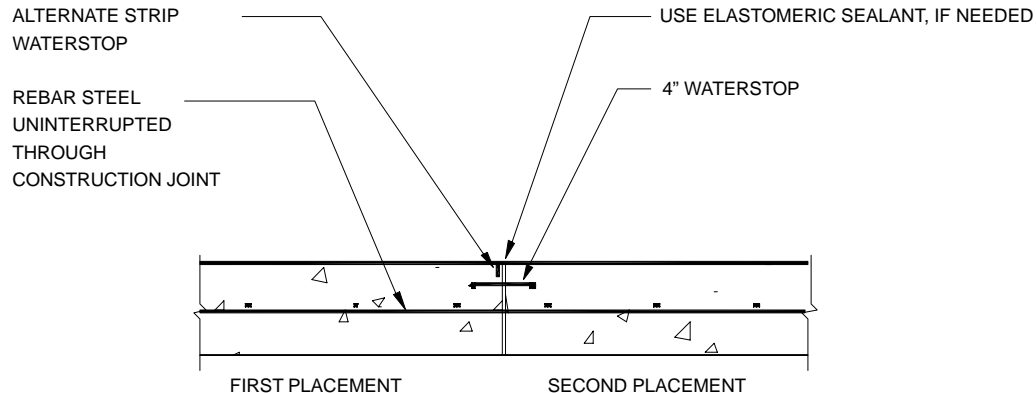
APPENDIX D, FIGURE D-1
MONOLITHIC FOOTING FLOOR DETAIL*



*For a more detailed version of this figure, contact the department, animal feeding operations.

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APPENDIX D, FIGURE D-2
WALL AND FLOOR CONSTRUCTION JOINT*



*For a more detailed version of this figure, contact the department, animal feeding operations.

[Filed 1/29/04, effective 3/24/04]

[Published 2/18/04]

EDITOR'S NOTE: For replacement pages for IAC, see
IAC Supplement 2/18/04.

ARC 3168B ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 455B.304(1) and 455D.7(1), the Environmental Protection Commission hereby adopts amendments to Chapter 111, "Financial Assurance Requirements for Municipal Solid Waste Landfills," Iowa Administrative Code.

These amendments incorporate minor revisions to Chapter 111. In Chapter 111, there are references to subrules found within other chapters of the administrative rules that are no longer accurate and therefore have been updated. Other revisions include adding wording that was unintentionally omitted and clarifying subrules which municipal solid waste landfill owners have had difficulty interpreting. These amendments will provide greater effectiveness, clarity and consistency with legislative intent for municipal solid waste financial assurance requirements.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 15, 2003, as **ARC 2863B**. A public hearing was held on November 5, 2003, in order to receive comments on these amendments. No comments were received at the public hearing. One comment was received by electronic mail but did not pertain to the amendments. Thus, no changes were made.

These amendments are intended to implement Iowa Code sections 455B.304(8) and 455B.306(8).

These amendments will become effective March 24, 2004.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [111.3 to 111.6, 111.8] is being omitted. These amendments are identical to those published under Notice as **ARC 2863B**, IAB 10/15/03.

[Filed 1/29/04, effective 3/24/04]

[Published 2/18/04]

[For replacement pages for IAC, see IAC Supplement 2/18/04.]

ARC 3181B REVENUE DEPARTMENT[701]

Adopted and Filed

Pursuant to the authority of Iowa Code section 421.14, the Department of Revenue hereby amends Chapter 10, "Interest, Penalty, Exceptions to Penalty, and Jeopardy Assessments," Iowa Administrative Code.

Notice of Intended Action was published in IAB Vol. XXVI, No. 12, p. 1039, on December 10, 2003, as **ARC 2991B**.

Iowa Code section 421.7 requires the Director of the Department of Revenue to determine the interest rate for each calendar year. The Director has determined that the rate of interest on interest-bearing taxes arising under Title XVI shall be 6 percent for the calendar year 2004 (0.5 percent per month). The Department will also pay interest at the 6 percent rate on refunds.

REVENUE DEPARTMENT[701](cont'd)

This amendment is identical to the one published under Notice of Intended Action.

This amendment will become effective March 24, 2004, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

This amendment is intended to implement Iowa Code section 421.7.

The following amendment is adopted.

Amend rule 701—10.2(421) by adding the following **new** subrule:

10.2(23) Calendar year 2004. The interest rate upon all unpaid taxes which are due as of January 1, 2004, will be 6 percent per annum (0.5% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 2004. In addition, this interest will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before or after January 1, 2004. This interest rate of 6 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 2004.

[Filed 1/30/04, effective 3/24/04]

[Published 2/18/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/18/04.

ARC 3183B

REVENUE DEPARTMENT[701]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 421.14 and 422.68, the Department of Revenue hereby amends Chapter 38, "Administration," Chapter 39, "Filing Return and Payment of Tax," Chapter 40, "Determination of Net Income," Chapter 41, "Determination of Taxable Income," Chapter 42, "Adjustments to Computed Tax," Chapter 43, "Assessments and Refunds," Chapter 46, "Withholding," Chapter 50, "Apportionment of Income for Resident Shareholders of S Corporations," Chapter 52, "Filing Returns, Payment of Tax and Penalty and Interest," Chapter 53, "Determination of Net Income," Chapter 54, "Allocation and Apportionment," Chapter 59, "Determination of Net Income," and Chapter 89, "Fiduciary Income Tax," Iowa Administrative Code.

Notice of Intended Action was published in IAB Vol. XXVI, No. 13, p. 1114, on December 24, 2003, as **ARC 3061B**.

Item 1 amends rule 701—38.8(422) to reflect the proper delegation by the Director related to audits and examinations.

Item 2 amends paragraph 39.6(2)"f" to eliminate a cross reference to a rule which is rescinded under Item 5.

Item 3 amends rule 701—40.1(422) to correct an incorrect cross reference.

Item 4 amends subparagraph 40.18(1)"a"(1) to eliminate a reference to a Revenue Ruling which has been revoked.

Item 5 rescinds rule 701—40.28(422), which is an obsolete rule regarding losses from passive farming activities. This rule only covered tax year 1986.

Item 6 amends rule 701—41.3(422) to clarify how the federal tax deduction and federal refund should be computed when refundable federal income tax credits, such as the

earned income tax credit and the motor vehicle fuel tax credit, reduce the federal tax liability.

Item 7 rescinds rule 701—42.10(422), which is an obsolete rule regarding a seed capital income tax credit. This credit is no longer applicable.

Items 8, 9 and 10 amend 43.3(1), 46.3(2)"a" and 46.4(5), respectively, to correct outdated departmental organization references brought about by reorganization.

Item 11 amends rule 701—50.3(422) to clarify what is considered a distribution for purposes of the apportionment of income for resident shareholders of S corporations.

Item 12 amends subrule 52.1(3) to correct a reference to a court case.

Item 13 amends rule 701—52.12(422) to clarify the sequence of tax credits to be taken.

Item 14 amends subparagraph 53.2(1)"a"(1) to eliminate a reference to a Revenue Ruling which has been revoked.

Item 15 amends rule 701—53.19(422) to correct a reference to a court case.

Items 16 and 17 amend subrule 54.6(3) to clarify what is considered a financial organization and to clarify how income from a financial organization should be sourced.

Item 18 amends rule 701—59.1(422) to correct a cross reference.

Items 19 and 20 amend paragraphs 89.8(7)"t" and 89.8(8)"c," respectively, to correct two cross references.

Four changes have been made to the Notice of Intended Action, all of which regard Item 6. The first two changes add clarifying language to the introductory paragraph of rule 701—41.3(422) and subrule 41.3(1)"a." The other two changes relate to the references to "additional child care credit" computed under Section 24(d) of the Internal Revenue Code in subrules 41.3(1)"d" and 41.3(2)"b." These references are changed to "additional child tax credit" since this is the correct name of the credit in Section 24(d) of the Internal Revenue Code.

The introductory paragraph of rule 701—41.3(422) now reads as follows:

"701—41.3(422) Federal income tax deduction and federal refund. Federal income taxes paid or accrued during the tax year are a permissible deduction for Iowa income tax purposes, adjusted by any federal income tax refunds received or accrued during the tax year. Taxpayers who are not on an accrual basis of accounting shall deduct their federal income taxes in the year paid."

Subrule 41.3(2), paragraph "a," now reads as follows:

"a. The entire amount of federal income tax withheld during the taxable year from compensation of the taxpayer. Where a husband and wife file separate returns or separately on a combined Iowa return, the actual federal income tax withheld from wages earned by either spouse or both spouses must be deducted by each in accordance with wage statement(s) and may not be prorated between the spouses."

Subrule 41.3(1), paragraph "d," introductory paragraph, now reads as follows:

"d. The earned income credit computed under Section 32 of the Internal Revenue Code and the additional child tax credit computed under Section 24(d) of the Internal Revenue Code, to the extent that these credits reduce the federal income tax liability on the prior federal return filed during the taxable year. Where a husband and wife file separately or separately on a combined Iowa return, the earned income credit and the additional child tax credit shall be prorated between the spouses by the ratio of net income reported by each spouse to total net income of both spouses in the year for which these credits were claimed."

REVENUE DEPARTMENT[701](cont'd)

Subrule 41.3(2), paragraph “b,” introductory paragraph, now reads as follows:

“b. Any portion of the federal refund received due to the earned income credit computed under Section 32 of the Internal Revenue Code or the additional child tax credit computed under Section 24(d) of the Internal Revenue Code does not have to be reported on the Iowa return. However, any portion of the federal refund received due to the motor vehicle fuel tax credit computed under Section 34 of the Internal Revenue Code does have to be reported on the Iowa return.”

These amendments will become effective March 24, 2004, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

These amendments are intended to implement Iowa Code chapter 422.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [38.8, 39.6(2)“f,” 40.1, 40.18(1)“a”(1), 40.28, 41.3, 42.10, 43.1(1), 46.3(2)“a,” 46.4(5), 50.3, 52.1(3), 52.12, 53.2(1)“a”(1), 53.19, 54.6(3), 59.1, 89.8(7)“t”“4,” 89.8(8)“c”] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 3061B**, IAB 12/24/03.

[Filed 1/30/04, effective 3/24/04]
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[For replacement pages for IAC, see IAC Supplement 2/18/04.]

ARC 3182B**REVENUE DEPARTMENT[701]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 421.14 and 422.68, the Department of Revenue hereby amends Chapter 38, “Administration,” Chapter 40, “Determination of Net Income,” Chapter 41, “Determination of Taxable Income,” Chapter 42, “Adjustments to Computed Tax,” and Chapter 43, “Assessments and Refunds,” Iowa Administrative Code.

Notice of Intended Action was published in IAB Vol. XXVI, No. 13, p. 1118, on December 24, 2003, as **ARC 3062B**.

Item 1 amends rule 701—38.10(422) to indicate the repeal of the requirement that the state general fund balance on June 30 of the prior year had to be \$60 million or more before there could be indexation of the tax rate brackets for the current year.

Item 2 rescinds subrules 38.10(1) to 38.10(17), which are obsolete subrules regarding cumulative inflation factors.

Item 3 amends rule 701—40.17(422) to clarify that taxpayers moving into Iowa may adjust the Iowa-source gross income on Schedule IA 126 by the moving expense allowed under the Internal Revenue Code and that any reimbursement for moving expense for these individuals is to be included in Iowa-source gross income. The amendment clarifies that taxpayers moving from Iowa to another state or country may not adjust the Iowa-source gross income by the moving expense and that any reimbursement of moving expense for these taxpayers is not allocated to Iowa.

Item 4 amends Example 6 of subrule 40.38(7) by showing that the capital losses in the example are not applied against the capital gain from the sale of the farmland in the farming business because the taxpayer's capital losses were not related to the farming business. The revision in this subrule was the result of a determination in a protested case.

Item 5 amends subrule 41.5(7) relating to the deduction for multipurpose vehicles, and provides a definition for multipurpose vehicles. The amendment also clarifies that the rule applies only to multipurpose vehicles that are for the model year 1992 or for earlier model years. The amendment also states that, in the case of multipurpose vehicles for model year 1993 and for model years after 1993, the registration fees for these vehicles are determined on the same basis as for automobiles so that the fees are computed on the values and weights of the multipurpose vehicles.

Item 6 amends the implementation clause for rule 701—41.5(422).

Item 7 amends subrule 42.2(8), which provides information on various prior amendments of the tuition and textbook credit, and refers to new rule 701—42.22(422), which describes the amendment of the tuition and textbook credit that was applicable for tax years beginning on or after January 1, 1998.

Item 8 amends paragraph “b” of subrule 42.4(3) to clarify that it is the taxpayer's gross income that is taxed by the other state or foreign country, and that it is the income tax paid to the other state or foreign country that is used to determine the amount of the out-of-state tax credit for resident taxpayers. This amendment also states that the out-of-state tax credit allowed on the taxpayer's return cannot exceed the income tax paid to the other state or foreign country.

Item 9 amends subrule 42.4(3) by adding new paragraph “c” to clarify how the out-of-state credit is computed, and includes an example illustrating how the credit is computed for a full-year resident. In addition, the new paragraph includes an example of how the out-of-state tax credit is computed for an individual who is a part-year resident of Iowa.

Item 10 adds new rule 701—42.22(422) that describes the tuition and textbook credit for tax years beginning on or after January 1, 1998. This rule includes all the conditions and qualifications that must be met before a taxpayer may claim the tuition and textbook tax credit. The rule contains a number of definitions relating to the deduction. The rule also lists all the expenditures related to extracurricular activities that will qualify for the tuition and textbook credit, as well as those expenditures related to extracurricular activities that are not eligible for the credit.

Item 11 rescinds and adopts new subrule 43.3(1) that describes how claims for refund are to be filed with the Department, including the forms on which the claims are to be filed.

Item 12 adds new subrule 43.3(15) that explains how the statute of limitations for refund is extended for a taxpayer who has paid 90 percent of the tax by the due date and files the original Iowa return in the six-month extended period after the due date. Two examples are included in this item to illustrate how the subrule works under different sets of facts.

One correction has been made to the Notice of Intended Action regarding Item 11. The reference to an “IA 843 Claim for Refund Form” has been eliminated since that form should not be used for claiming refunds for individual income tax.

The introductory paragraph of subrule 43.3(1) now reads as follows:

“**43.3(1)** Claims for refund. A claim for refund is a formal request made by the taxpayer or the taxpayer's personal representative to the department of revenue for repayment of state income tax that was paid with the taxpayer's previously

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filed individual income tax return. In order for a claim for refund to be considered to be a valid document, the taxpayer or the taxpayer's personal representative must file the claim on an IA 1040X Amended Return Form or on an IA 1040 Income Tax Return Form for the appropriate tax year with the notation "Amended for Refund" clearly shown on the face of the return form. The taxpayer or the taxpayer's personal representative must file the claim for refund with the department under separate cover so the claim is not filed with another tax return or with other documents or forms submitted to the department."

These amendments will become effective March 24, 2004, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

These amendments are intended to implement Iowa Code sections 422.4, 422.8, 422.12, 422.21, 422.25 and 422.73.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [38.10, 40.17, 40.38(7), 41.5(7), 42.2(8), 42.4(3)"b" and "c," 42.22, 43.3(1), 43.3(15)] is being omitted. With the exception of the change noted above, these amendments are identical to those published under Notice as **ARC 3062B**, IAB 12/24/03.

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[For replacement pages for IAC, see IAC Supplement 2/18/04.]

ARC 3164B

VOTER REGISTRATION COMMISSION[821]

Adopted and Filed

Pursuant to the authority of Iowa Code section 47.8 and Title III, Section 303 of the Help America Vote Act of 2002, Public Law 107-252, 42 U.S.C. 15483, the Voter Registration Commission hereby adopts amendments to Chapter 2,

"Voter Registration Applications, Acceptability, Registration Dates, and Effective Dates," and Chapter 3, "Lists of Registered Voters," Iowa Administrative Code.

Notice of Intended Action was published in the December 24, 2003, Iowa Administrative Bulletin as **ARC 3037B**. No public comment was received. These amendments are identical to the amendments published under Notice.

Item 1 is intended to implement Iowa Code section 48A.11. The amendment adds to mail-in voter registration applications new elements that are required by Title III, Section 303 of the Help America Vote Act of 2002, Public Law 107-252, 42 U.S.C. 15483. The new elements are the Iowa driver's license number (if the applicant has an Iowa driver's license), nonoperator's identification card number, or the last four digits of the applicant's social security number; citizenship and age questions; and a notice that applicants who register by mail must provide identification documents unless their driver's license number, nonoperator's identification card number, or the last four digits of the social security number can be verified. These requirements are part of the Help America Vote Act.

Item 2 provides procedures to be followed if applicants submit incomplete application forms. Item 3 requires the removal of driver's license and nonoperator identification card numbers from lists of registered voters; social security numbers currently are required to be removed pursuant to Iowa Code section 48A.38(1)"f."

These amendments will become effective on March 24, 2004.

These amendments are intended to implement Iowa Code section 48A.11.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [2.1, 2.8, 3.10] is being omitted. These amendments are identical to those published under Notice as **ARC 3037B**, IAB 12/24/03.

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